

2718

No. 13149

United States
Court of Appeals
for the Ninth Circuit.

D. B. SALISBURY,

Appellant,

vs.

JOSEPH F. RUGGIERI, Receiver, etc.,

Appellee.

Transcript of Record

Appeals from the United States District Court,
Southern District of California,
Central Division.

FILED

JAN 26 1952

PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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BERNARD C. BRENNAN,
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For Appellee:

JOSEPH JASPAN,
LEO V. SILVERSTEIN,
210 West 7th St.,
Los Angeles 14, Calif.

In the United States District Court for the
Eastern District of New York

Civil Action No. 11283

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CANADIAN AMERICAN COMPANY, INC.;
JAMES ALBERT WIGMORE, PEARL
JOHNSTONE WIGMORE, WESTBURY
FARM & LAND CORPORATION, and WIL-
LIAM E. SHEENE, JR.,

Defendants.

ORDER APPOINTING RECEIVER FOR CA-
NADIAN AMERICAN COMPANY, INC.,
AND JAMES ALBERT WIGMORE

The United States, plaintiff herein, having filed its verified complaint for the foreclosure of Federal tax liens against the defendants Canadian American Company, Inc., and James Albert Wigmore, pursuant to the provisions of Section 3678 of the Internal Revenue Code, and praying for the appointment of a receiver for all of the assets and properties of the defendants Canadian American Company, Inc., and James Albert Wigmore, said receiver to have all the powers of a receiver in equity. The Commissioner of Internal Revenue having filed his certificate pursuant to the provisions of Section 3678(d) of the Internal Revenue Code that the appointment of a receiver having

the powers of a receiver in equity is in the public interest.

This Court having issued a notice to show cause directed to all of the defendants in this complaint as [22*] to why said receiver should not be appointed, and the matter having duly come on to be heard at a term for motions of this Court on the 5th day of December, 1950, and the defendants Canadian American Company, Inc.; James Albert Wigmore, Pearl Johnstone Wigmore and Westbury Farm and Land Corporation having appeared by their attorney, Robert Lee Henry, Esq., and indicating they have no objection to the appointment of a receiver, and the defendant William E. Sheene, Jr., having entered a general appearance by his attorney Sidney O. Raphael, Esq., and likewise indicating that he has no objection to the appointment of said receiver,

Now upon reading and filing the verified petition of the plaintiff herein, and being duly advised of the contents thereof, and having heard the statements of counsel and being duly advised in the premises, the Court finds that the appointment of a receiver having all of the powers of a receiver in equity is necessary and that a receiver should be appointed for the assets, property, debts, equitable interest, rights and things in action, effects and estate, real and personal, of said defendants James Albert Wigmore and Canadian American Company, Inc., it is therefore

Ordered that the petition and motion for the ap-

*Page numbering appearing at foot of page of original Certified Transcript of Record.

pointment of a receiver herein made by the plaintiff United States is granted; and it is hereby further

Ordered that Joseph F. Ruggieri of 16 Court Street, Brooklyn, State of New York, a resident of said State, be and he hereby is appointed receiver of all of the property, debts, equitable interests, rights and things in action, effects and estate, real and personal, of the said defendants Canadian American Company, Inc., and James Albert Wigmore with all the powers of a receiver in equity and it is hereby further [23]

Ordered that said receiver, before entering upon the duties of his trust, execute and acknowledge a bond, with sufficient surety or sureties, to be approved by this Court, to the United States of America, in the penalty of \$25,000.00, conditioned for the faithful discharge of his duties as such receiver and file said bond in the office of the Clerk of this Court, and that upon the filing of this order and the final approval and filing of said bond, as required by law, the said receiver shall be invested with all the rights and powers of a receiver as such, according to the law and practice in such cases made and provided and established; and it is further hereby

Ordered that all of the defendants herein and their officers and directors, agents, employees and attorneys and each of them, be and they hereby are forbidden to make or suffer any transfer, payment, encumbrance or other disposition of or interference with the property, debts, equitable

interests, rights, things in action, effects and estate, real and personal of the said defendants Canadian American Company, Inc., and James Albert Wigmore except in obedience hereto, until further direction in the premises; and it is hereby further

Ordered that the said receiver and any party to this proceeding or any person interested in the property which may be taken into the hands of said receiver may apply at any time on due notice to all parties who have appeared herein to this Court for further or other instructions and for such further power as may be necessary to enable the receiver to carry out properly the terms of this order and fulfill his duties as such receiver; and it is hereby further

Ordered that said receiver deposit all [24] funds of the receivership in the Chemical Bank and Trust Company, 50 Court Street, Brooklyn, New York, in his name as receiver, and no withdrawal shall be made therefrom except by checks countersigned by the surety on his bond. Said depositary shall send monthly statements of the deposits in and withdrawals from said account to the depositor receiver and also to Frank J. Parker, United States Attorney, Brooklyn, New York, attorney for the plaintiff herein, United States of America; and it is hereby further

Ordered that this order shall be without prejudice to any rights, claims, liens or priorities existing against the assets or properties of the defendant, James Albert Wigmore in favor of the defendant William E. Sheene, Jr., and any rights, claims,

liens or priorities which said William E. Sheene, Jr., has or possesses against said assets or properties on this date shall be preserved to the same extent as they now exist without being impaired by virtue of this order or proceedings herein. This Court does not undertake to determine at this time the extent, if any, of said rights, liens, claims or priorities.

Dated this 5th day of December, 1950.

MATTHEW T. ABRUZZO,

United States District Judge.

The entry of the foregoing order is hereby consented to.

Dated December 5, 1950.

ROBERT LEE HENRY,

Attorney for Canadian American Company, Inc.;
James Albert Wigmore, Pearl Johnstone Wigmore, and Westbury Farm and Land Corporation.

SIDNEY O. RAPHAEL,

Attorney for William E.

Sheene, Jr.

A true copy.

[Endorsed]: Filed December 15, 1950. [25]

United States District Court, Eastern
District of New York

Civil No. 11283

[Title of Cause.]

ORDER AUTHORIZING SALE ORANGE
GROVE AVENUE PROPERTY IN CALI-
FORNIA

A motion having duly come on to be heard before me on the 6th day of June, 1951, for an order authorizing the receiver to sell at a judicial sale to be held at a time, place and in a manner to be directed by the United States District Court for the Southern District of California the premises known as 915-955-1003 Orange Grove Avenue, Pasadena, California,

Now on reading and filing the order to show cause dated May 29, 1951, the petition of Joseph F. Ruggieri, receiver herein, duly verified the 28th day of May, 1951, the offer of D. B. Salisbury dated May 21, 1951, and the affidavit of E. Gayle McGuigan duly sworn to on the 6th day of June, 1951, and after hearing Joseph Jaspan for the motion and McGuigan & Kilcullen, Esqs., by E. Gayle McGuigan appearing for James E. Wigmore, Pearl Johnstone Wigmore and other defendants herein and not opposing, it is,

On Motion of Joseph Jaspan, attorney for the receiver,

Ordered, that the motion be and the same hereby is in all respects granted, and it is further

Ordered, that Joseph F. Ruggieri, the receiver

herein, be and he hereby is authorized to offer for sale and is authorized to sell the premises known as 915-955-1003 Orange Grove Avenue, Pasadena, California, [28] more fully described as follows:

Lot 2 of P. C. Baker's Subdivision, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 53, Page 8, of Miscellaneous Records in the office of the County Recorder of said County.

Those portions of the 25.78 acre tract marked Matthews and of the 30 acre tract marked Lockhart and of the parcel marked Reservation 1.14 acre, all in Division E of the San Gabriel Orange Grove Association lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records in the office of the County Recorder of said County, and of a portion of W. G. McGregory's Subdivision, as per map recorded in Book 18, Page 44 of Miscellaneous Records in the office of the County Recorder of said County, described as a whole as follows:

Beginning in the west line of Orange Grove Avenue, 100 feet wide, at the northeast corner of land described in deed to John S. Cravens recorded in Book 1232, Page 104 of Deeds, records of said County; thence northerly along the east line of lot 1 of said W. G. McGregory's Subdivision to the northeast corner of said lot in the dividing line between said Matthews and Lockhart Tracts; thence continuing northerly along the west line of Orange Grove

Avenue to a line parallel with and distant 3 feet northerly, measured at right angles from said dividing line; thence westerly parallel with said dividing line, 484 feet; more or less to a line drawn at right angles to said dividing line from a point therein distant westerly 80 feet from the northwest corner of Lot 1 of said W. G. McGregory's Subdivision; thence southerly along said line drawn at right angles 3 feet to a point in said dividing line which point is the northeast corner of land described in deed to Lilly Busch, recorded in Book 2011, Page 211, of said Deed Records; thence along the east line of said land of Busch south $4^{\circ} 15'$, east 163.6 feet, more or less, to the westerly prolongation of the north line of said land described in deed to John S. Cravens first above mentioned; thence easterly along said prolongation and north line 483.5 feet, more or less, to the point of beginning.

That portion of the 25.78 acre tract marked "Matthews" in Division "E" of the San Gabriel Orange Grove Association lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous records, in the office of the County Recorder of said County, described as follows:

Beginning at a point in the west line of Orange Grove Avenue as now established, 100 feet wide, at the southeast corner of the land described as Parcel No. 4 in deed to Ernest F.

Nolting, et ux., recorded in Book 20160, Page 25, Official Records of said County; thence westerly along the southerly line of said land of Nolting to a point in the easterly line of the land described in deed to Louise G. Hill, et al., recorded in Book 9906, Page 289, of said Official Records; thence southerly along said easterly line of said land of Hill to a point in the southerly line of said 25.78 acre Tract; thence easterly along the south line of said 25.78 acre Tract, 42.38 feet; more or less, to the southwest corner of the land described in deed to Arthur H. Fleming, recorded in Book 2392, Page 179, of Deeds, thence north 3 feet to the northwest corner of said land of Fleming, thence easterly parallel with the southerly line of said 25.78 acre Tract, a distance of 483.78 feet, more or less, to a point in the said west line of Orange Grove Avenue; [29] thence northerly along the westerly line of said Avenue 276.46 feet; more or less, to the point of beginning.

and it is further,

Ordered, that the time, manner and place of said sale may be fixed by an order to be entered, without further notice to the parties herein, in the United States District Court for the Southern District of California, and it is further

Ordered, that Joseph F. Ruggieri, the receiver herein, be and he hereby is authorized to execute and deliver all deeds, documents or other instruments which may be necessary to effectuate said

sale, and it is further

Ordered, that the United States District Court for the Southern District of California may enter such order or orders as may be necessary to effectuate said sale.

Dated Brooklyn, New York, June 8th, 1951.

/s/ MATTHEW T. ABRUZZO,
United States District
Judge. [30]

United States of America,
Eastern District of New York—ss.

I, Percy G. B. Gilkes, Clerk of the United States District Court in and for the Eastern District of New York, do hereby certify that the annexed and foregoing is a true and full copy of the original order of Judge Matthew T. Abruzzo, signed June 8, 1951, in Civil Action 11283, U.S.A. vs. Canadian American Co., Inc., et al., authorizing sale of Orange Grove Avenue property in California; now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the afore-said Court at Brooklyn, N. Y., this 14th day of June, A.D. 1951.

[Seal] /s/ PERCY G. B. GILKES,

By /s/ JAMES R. ABRAM,
Deputy Clerk.

[Endorsed]: Filed July 6, 1951. [31]

In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil No. 12,703-BH

In the Matter of the Action Commenced in the
United States District Court for the Eastern
District of New York, Entitled

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CANADIAN AMERICAN COMPANY, INC.,
et al.,

Defendants.

ORDER FOR SALE OF REAL PROPERTY
BY RECEIVER AT PUBLIC SALE

Upon the annexed petition of Joseph F. Ruggieri,
Receiver herein, and upon the exhibits attached
thereto, and the orders of the United States District
Court for the Eastern District of New York, it is

Ordered that Joseph F. Ruggieri, as Receiver
appointed in the action entitled "In the Matter of
the Action Commenced in the United States District
Court for the Eastern District of New York,
Entitled United States of America, Plaintiff, vs.
Canadian American Company, Inc., et al., Defend-
ants"—sell, at public auction, to the highest bidder
or bidders, in Court Room No. 6 in the United
States Post Office and Court House Building, at
Los Angeles, California, on Monday, the 13th day

of August, 1951, at the hour of ten o'clock a.m., Pacific Daylight Savings Time—all of said Receiver's right, title and interest in and to the premises commonly known as 915-955-1003 [32] Orange Grove Avenue, Pasadena, California, and more particularly described in said annexed petition of Joseph Ruggieri, Receiver herein, and the "Notice of Sale" hereinafter referred to; and it is further

Ordered that the offer of D. B. Salisbury to purchase said property, referred to in said Receiver's petition, be considered at said time; and it is further

Ordered that this Court will consider such other and further business as may properly come before the Court at said time in connection with such sale; and it is further

Ordered that Eldred L. Meyer be and he hereby is appointed to appraise the value of said property and report same to this Court forthwith, for which he shall receive a compensation of no more than \$25.00 per diem; and it is further

Ordered that notice of this sale be mailed within ten (10) days from the date of this Order to all parties who have appeared in this proceeding in this District, and to the Attorney General of the State of California, the County Counsel of the County of Los Angeles, California, and the City Attorney of the City of Pasadena, California; and it is further

Ordered that a copy of said notice of sale be published in the Los Angeles Daily Journal, a newspaper regularly published in the County of Los

Angeles, California, once a week for four consecutive weeks commencing on July 13, 1951; and it is further

Ordered that said notice shall be substantially in the form and content of the notice hereto annexed, which this Court hereby approves; and it is further

Ordered that in the conduct of such sale the Receiver may pay real estate brokerage commission in accordance with the probate rules prevalent in this District which provide for the payment of the full commissions of five per cent to the broker producing the initial [33] bid if it shall become the successful bid, and providing for the payment of only one-half commissions to the broker securing the initial bid if some other higher bid shall be accepted, and further providing that the broker producing a successful bid other than the original bid shall also be entitled to one-half of the commissions.

Dated at Los Angeles, California, this 12th day of July, 1951.

/s/ BEN. HARRISON,
United States District
Judge. [34]

[Title of District Court and Cause.]

PETITION FOR ORDER AUTHORIZING
SALE OF REAL ESTATE

Comes now Joseph F. Ruggieri, Receiver in the action entitled United States of America against

Canadian American Company, Inc., et al., by and through his attorney, Joseph Jaspan, alleges and represents to the Court as follows:

I.

That by an order dated December 5, 1950, made and entered in the United States District Court for the Eastern District of New York, petitioner was appointed Receiver of the assets and property of James Albert Wigmore and Canadian American Company, Inc.

II.

That by order dated February 9, 1951, the receivership was extended and petitioner was also appointed Receiver of the assets of National Munitions Company of Eldred, Pennsylvania. [39]

III.

Pursuant to Title 28, U.S.C., Section 754, copies of the aforementioned orders and the complaints in said action were filed with the Clerk of the United States District Court for the Southern District of California.

IV.

That on December 5, 1950, Wagner Realty Company was the owner of the property known as 915-955-1003 Orange Grove Avenue, Pasadena, California, which property is more fully described in the attached exhibit.

That petitioner became the owner of the outstanding issued stock of Wagner Realty Company on December 5, 1950.

That by resolution of Wagner Realty Company

said property was conveyed to and title was vested in Joseph F. Ruggieri as Receiver by grant deed duly recorded in the Office of the County Recorder of Los Angeles County on March 1, 1951.

V.

That by order entered in the United States District Court for the Eastern District of New York, the Receiver was authorized to sell and convey said property to the highest bidder at a judicial sale, the time, place and manner of which are to be fixed by an order of the United States District Court for the Southern District of California.

VI.

That the Receiver herein has obtained an offer of \$60,100.00 from D. B. Salisbury of 1235 Crescent Heights Boulevard, Los Angeles, California, for said property, consisting of approximately 8 acres upon which there is presently one structure—a copy of said offer being hereto attached as an exhibit.

VIII.

That said offer is conditioned upon approval of the Court and subject to further bidding at a public judicial sale. [40]

IX.

That said offer was produced by the William Wilson Company of 40 North Garfield Avenue, Pasadena, California, licensed real estate brokers.

That the Receiver has agreed, subject to the approval of the Court, to pay the usual commission of five per cent in the event the bid of Mr. Salisbury

in the original amount or in any increased amount is accepted by this Court. The Receiver has further agreed to abide by the local probate rules covering the payment of commissions in the event that some other and higher offer is accepted.

X.

The Receiver respectfully prays that a public sale be held in the Court at which the bid of Mr. D. B. Salisbury may be considered and such other and further bids as may be made for said property may likewise be considered.

Wherefore, petitioner as Receiver respectfully prays that the property described in the attached exhibits be sold at public judicial sale in the United States District Court for the Southern District of California in accordance with the terms of the attached order.

Dated this 18th day of June, 1951.

/s/ JOSEPH JASPAN,

Attorney for Receiver. [41]

EXHIBIT

Description of Real Property Referred to in Paragraph IV of the Foregoing Petition

Parcel 1. Lot 2 of P. C. Baker's Subdivision, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 53, Page 8, of Miscellaneous Records in the office of the County Recorder of said County.

Parcel 2. Those portions of the 25.78 acre tract

marked Matthews and of the 30 acre tract marked Lockhart and of the parcel marked Reservation 1.14 acres, all in Division E of the San Gabriel Orange Grove Association lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records in the office of the County Recorder of said County, and of a portion of W. G. McGregory's Subdivision, as per map recorded in Book 18, Page 44, of Miscellaneous Records in the office of the County Recorder of said County, described as a whole as follows:

Beginning in the west line of Orange Grove Avenue, 100 feet wide, at the northeast corner of land described in deed to John S. Cravens recorded in Book 1232, Page 104, of Deeds, Records of said County; thence northerly along the east line of Lot 1 of said W. G. McGregory's Subdivision to the northeast corner of said lot in the dividing line between said Matthews and Lockhart Tracts; thence continuing northerly along the west line of Orange Grove Avenue to a line parallel with and distant 3 feet northerly, measured at right angles, from said dividing line; thence westerly parallel with said dividing line, 484 feet, more or less, to a line drawn at right angles to said dividing line from a point therein distant westerly 80 feet from the northwest corner of Lot 1 of said W. G. McGregory's Subdivision; thence southerly along said line drawn at right angles 3 feet to a point in said dividing line, which point is the north-

east corner of land described in deed to Lilly Busch, recorded in Book 2011, Page 211, of said Deed Records; thence along the east line of said Busch, south $4^{\circ} 15'$, east 163.6 feet, more or less, to the westerly prolongation of the north line of said land described in deed to John S. Cravens first above mentioned; thence easterly along said prolongation and north line 483.5 feet, more or less, to the point of beginning.

Parcel 3. That portion of the 25.78 acre tract marked "Matthews" in Division "E" of the San Gabriel Orange Grove Association Lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records, in the office of the County Recorder of said County, described as follows:

Beginning at a point in the west line of Orange Grove Avenue as now established, 100 feet wide, at the southeast corner of the land described as Parcel No. 4 in deed to Ernest F. Nolting, et ux., recorded in Book 20160, Page 25, Official Records of said County; thence westerly along the southerly line of said land of Nolting to a point in the easterly line of the land described in deed to Louise G. Hill, et al., recorded in [42] Book 9906, Page 289, of said Official Records; thence southerly along said easterly line of said land of Hill to a point in the southerly line of said 25.78 acre tract; thence easterly along the south line of said

25.78 acre tract, 42.38 feet, more or less, to the southwest corner of the land described in deed to Arthur H. Fleming, recorded in Book 2392, Page 179, of Deeds; thence north 3 feet to the northwest corner of said land of Fleming; thence easterly parallel with the southerly line of said 25.78 acre tract, a distance of 483.78 feet, more or less, to a point in the said west line of Orange Grove Avenue; then northerly along the westerly line of said avenue 276.46 feet, more or less, to the point of [43] beginning.

EXHIBIT

Offer Referred to in Paragraph VI of
Foregoing Petition

Pasadena, California,
May 21, 1951.

Mr. Joseph F. Ruggieri, Receiver,
c/o Hotel Ambassador,
Los Angeles, California.

Dear Sir:

We hereby offer to purchase the following described property in the City of Pasadena, County of Los Angeles, State of California, and described as follows:

Parcel 1: Lot 2 of P. C. Baker's Subdivision, 126.46 x 700, inc. all improvements thereon, otherwise known as 915 S. Orange Grove.

Parcel 2: That portion of division E,

S.G.O.G. Asso. Lands, to the So. of Parcel 1; 278.07 x 493.58 (North side) x 276.97 (rear) x 526.16 (South).

Parcel 3: No. 163' of Lot 1, W. G. McGregory's Subdivision, also Lot com. at N/E cor. of Lot 1, W. G. McGregory's Sub., thence N. 3' x 483.65' deep W., also lot commencing at N/W cor. Lot 1, W. G. McGregory's sub., thence W. 80', thence S. 163.2', thence E. 52.8' to N. line of said Lot 1, thence N. on said line to beginning, being a portion of Div. E, S.G.O.G. Asso. Lands.

Subject to any state of facts an accurate survey may show.

Free and clear of all encumbrances except:

(a) General and Special City and County Taxes of the fiscal year 1951-1952.

(b) Covenants, conditions, restrictions, reservations and easements of record and approved zoning regulations.

For the sum of Sixty Thousand, One Hundred Ten (\$60,110.00) Dollars cash, payable as follows:

Check of The William Wilson Company for Six Thousand, One Hundred (\$6,100.00) Dollars payable to your order and the balance on or before ten (10) days from date of confirmation of sale.

This offer is made subject to the conveyance of good and sufficient title, seller to furnish customary policy of title insurance at a liability of \$60,110.00,

showing property free and clear of all encumbrances excepting general and special City and County taxes of the fiscal year 1951-1952 and conditions and restrictions of record, if any, as above provided.

Taxes of the fiscal year 1951-1952 to be prorated and paid by the buyer from date of confirmation of sale.

It is understood that this property is owned by Joseph F. Ruggieri, Receiver, in the Matter of the United States of America vs. Canadian [44] American Co., Inc., et al., and that the completion of this purchase is subject to the confirmation by the appropriate United States District Court, it being understood that you will take all necessary legal steps immediately to procure confirmation of sale at the earliest possible date.

It is further agreed that in the event the title is not delivered to us by reason of failure of the Court to approve or by reason of the fact that some other purchaser shall have made a higher bid at a judicial sale or in accordance with the terms of any Court order, or by reason of the unmarketable title, the obligation of the Receiver hereunder, or of the Offeror hereunder, shall both be cancelable and both shall be discharged of any liability on their part upon the return of the deposit made hereunder.

Seller to furnish a contour survey by a licensed surveyor at his expense.

If this offer is accepted, we shall take title in the names of D. B. Salisbury and Verne Salisbury, his wife, as joint tenants.

It is a part of this offer that the completion of

this sale and the delivery of the Title Policy of the subject property hereunder shall be completed on or before July 31st, 1951, or the deposit funds be returned to the offeror.

Yours very truly,

D. B. SALISBURY.

[Endorsed]: Filed July 12, 1951. [45]

[Title of District Court and Cause.]

NOTICE OF SALE

Notice Is Hereby given that pursuant to an Order entered by the District Court of the United States in and for the Southern District of California, Central Division, dated July 12, 1951, in a cause pending in said Court entitled "In the Matter of the Action Commenced in the United States District Court for the Eastern District of New York, Entitled: United States of America, Plaintiff, vs. Canadian American Company, Inc., et al., Defendants"—Civil #12,703-BH—I, Joseph F. Ruggieri, as the Receiver appointed in said action, will sell at public auction to the highest bidder or bidders, in Courtroom No. 6 in the United States Post Office and Court House Building, Los Angeles, California, on Monday, the 13th day of August, 1951, at the hour of ten o'clock a.m., Pacific Daylight Savings Time, all of the undersigned Receiver's right, title

and interest in and to the premises commonly known as 915-955-1003 [46] Orange Grove Avenue, Pasadena, California, and more particularly described as follows, to wit:

Parcel 1. Lot 2 of P. C. Baker's Subdivision, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 53, Page 8, of Miscellaneous Records in the office of the County Recorder of said County.

Parcel 2. Those portions of the 25.78 acre tract marked Matthews and of the 30 acre tract marked Lockhart and of the parcel marked Reservation 1.14 acres, all in Division E of the San Gabriel Orange Grove Association lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records in the office of the County Recorder of said County, and of a portion of W. G. McGregory's Subdivision, as per map recorded in Book 18, Page 44, of Miscellaneous Records in the office of the County Recorder of said County, described as a whole as follows:

Beginning in the west line of Orange Grove Avenue, 100 feet wide, at the northeast corner of land described in deed to John S. Cravens recorded in Book 1232, Page 104, of Deeds, Records of said County; thence northerly along the east line of Lot 1 of said W. G. McGregory's Subdivision to the northeast corner of said lot in the dividing line between said Matthews and Lockhart Tracts; thence continuing northerly along the west line of

Orange Grove Avenue to a line parallel with and distant 3 feet northerly, measured at right angles, from said dividing line; thence westerly parallel with said dividing line, 484 feet, more or less, to a line drawn at right angles to said dividing line from a point therein distant westerly [47] 80 feet from the northwest corner of Lot 1 of said W. G. McGregory's Subdivision; thence southerly along said line drawn at right angles 3 feet to a point in said dividing line which point is the northeast corner of land described in deed to Lilly Busch, recorded in Book 2011, Page 211, of said Deed Records; thence along the east line of said land of Busch south $4^{\circ} 15'$ east 163.6 feet, more or less, to the westerly prolongation of the north line of said land described in deed to John S. Cravens first above mentioned; thence easterly along said prolongation and north line 483.5 feet, more or less, to the point of beginning.

Parcel 3. That portion of the 25.78 acre tract marked "Matthews" in Division "E" of the San Gabriel Orange Grove Association Lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records, in the office of the County Recorder of said County, described as follows:

Beginning at a point in the west line of Orange Grove Avenue as now established, 100 feet wide, at the southeast corner of the land described as Parcel No. 4 in deed to Ernest F. Nolting, et ux., recorded in Book 20160, Page 25, Official Records of said

County; thence westerly along the southerly line of said land of Nolting to a point in the easterly line of the land described in deed to Louise G. Hill, et al., recorded in Book 9906, Page 289, of said Official Records; thence southerly along said easterly line of said land of Hill to a point in the southerly line of said 25.78 acre tract; thence easterly along the south line of said 25.78 acre tract, 42.38 feet, more or less, to the southwest corner of the land described in deed to Arthur H. Fleming, recorded in Book 2392, Page 179, of Deeds; thence north 3 feet to the northwest corner of said land of Fleming; thence easterly parallel with [48] the southerly line of said 25.78 acre tract, a distance of 483.78 feet, more or less, to a point in the said west line of Orange Grove Avenue; thence northerly along the westerly line of said avenue 276.46 feet, more or less, to the point of beginning.

Said parcels will be offered as an entirety and not separately.

Notice Is Further Given that D. B. Salisbury has offered to purchase said real property and pay therefor the sum of \$60,110.00, all as more particularly set forth in the Petition of this Receiver filed in said proceeding on July 12, 1951.

For further particulars concerning the said Salisbury's offer, the terms of the sale, and the terms and provisions of the Order of the United States District Court in and for the Southern District of California, Central Division, intending purchasers are hereby referred to the Petition of the Receiver

on file in said proceeding and the Order entered therein dated July 12, 1951.

Dated at Los Angeles, California, this 12th day of July, 1951.

JOSEPH F. RUGGIERI,
Receiver.

By /s/ LEO V. SILVERSTEIN,
One of His Attorneys.

[Endorsed]: Filed July 20, 1951. [49]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF
NOTICE OF SALE

Leo V. Silverstein, being first duly sworn, says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above-entitled action; that affiant's business address is 210 West Seventh Street, Los Angeles 14, California; that on the 20th day of July, 1951, affiant served the within "Notice of Sale" on the United States of America, State of California, County of Los Angeles, California; City of Pasadena, California, and Joseph F. Ruggieri, as Receiver in said action, [50] by placing a true copy thereof in an envelope addressed to each, as follows:

(1) United States of America, by mailing

to Mr. Ernest A. Tolin, United States Attorney, 600 Federal Building, Los Angeles 12, California. Attention Mr. Eugene Harpole, Special Attorney.

(2) State of California, by mailing to Mr. Edmund G. Brown, Attorney General of the State of California, 600 State Building, 217 W. First Street, Los Angeles 12, California. Attention Mr. Edward Sumner.

(3) County of Los Angeles, by mailing to Mr. Harold W. Kennedy, County Counsel of the County of Los Angeles, 1100 Hall of Records, Los Angeles 12, California. Attention Mr. Andrew O. Porter.

(4) City of Pasadena, California, by mailing to Mr. H. Burton Noble, City Attorney of the City of Pasadena, Room 202, City Hall, Pasadena 1, California. Attention Mr. Robert E. Michalski.

(5) Mr. Joseph F. Ruggieri, Receiver, c/o Mr. Joseph Jaspán, Counselor at Law, 16 Court Street, Brooklyn 2, New York.

and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made; that there is delivery service by United States mail at the places so addressed and/or there is a regular

communication by mail between the place of mailing and the places so addressed; [51]

That the foregoing are all of the parties who have appeared in this proceeding in this District.

/s/ LEO V. SILVERSTEIN.

Subscribed and sworn to before me this 20th day of July, 1951.

[Seal] /s/ MARIE TREAIS,
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed July 20, 1951. [52]

United States District Court, Southern District
of California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

August 13, 1951

Present: The Honorable James M. Carter,
District Judge.

Nature of Proceedings

(1) Public auction, to sell to the highest bidder, of all of the right, title and interest of Jos. F. Ruggeri, Receiver, in and to the premises commonly known as 915-955-1003 Orange Grove Ave., Pasadena, Calif.; pursuant to order of July 12, 1951, and notice of sale;

(2) Consideration of the offer of D. B. Salisbury to purchase said property;

(3) Hearing such other and further business as may properly come before the Court in connection with such sale.

Court makes a statement and announces it will now receive any bids over the bid of D. B. Salisbury in amount of \$60,110.

No other bid is made, and

Ruling

It is ordered that said property be sold to D. B. Salisbury for the sum of \$60,110; counsel for Receiver to prepare and present written order thereon.

EDMUND L. SMITH,
Clerk. [54]

[Title of District Court and Cause.]

ORDER SETTING TIME FOR HEARING ON
MOTION TO VACATE MINUTE ORDER
AND FIXING NOTICE OF HEARING

On reading the annexed motion and good cause appearing therefor,

It Is Hereby Ordered:

1. That the hearing on said motion be and the same is hereby set for and will be heard on the 22nd day of August, 1951, at the hour of 10 o'clock a.m., Pacific Daylight Savings Time, in Court Room No. 3, before Honorable James M. Carter, United States District Court Judge.

2. It Is Further Ordered that the time for giving notice of such hearing shall be and it is hereby shortened so that the same may be given by serving a copy of the annexed motion and a copy of this order, by depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, on or before the hour of 5 o'clock p.m., on August 17th, 1951, to each of the following, to wit: [55]

D. B. Salisbury, 1235 Crescent Heights Blvd., Los Angeles, California.

United States of America, by mailing to Mr. Ernest A. Tolin, United States Attorney, 600 Federal Building, Los Angeles 12, California; attention Mr. Eugene Harpole, Special Attorney.

State of California, by mailing to Mr. Edmund G. Brown, Attorney General of the State of California, 217 West First Street, Los Angeles 12, California.

County of Los Angeles, by mailing to Mr. Harold W. Kennedy, County Counsel of the County of Los Angeles, 1100 Hall of Records, Los Angeles 12, California.

City of Pasadena, by mailing to Mr. H. Burton Noble, City Attorney of the City of Pasadena, Room 202, City Hall, Pasadena, California.

Mr. Joseph F. Ruggieri, Receiver, c/o Mr. Joseph Jaspan, Counselor at Law, 16 Court Street, Brooklyn 2, New York.

That service aforesaid shall constitute and be service of the notice of hearing on said motion.

Dated August 16, 1951.

/s/ JAMES M. CARTER,
United States District
Judge. [56]

[Title of District Court and Cause.]

MOTION TO VACATE AND SET ASIDE
MINUTE ORDER AUTHORIZING RE-
CEIVER'S SALE OF REAL PROPERTY
AND FOR FURTHER PROCEEDINGS RE
SALE

Now comes Joseph F. Ruggieri, Receiver in the action entitled United States of America against Canadian American Company, Inc., et al., by and through his attorney, Joseph Jaspan, and moves the court to vacate and set aside the sale and any minute order made in connection therewith by the Honorable James M. Carter, Judge of the United States District Court, on August 13, 1951, by this moving Receiver to D. B. Salisbury of the real property described in the petition for order authorizing sale of real property filed by this moving party in this court, dated July 12, 1951, for the following reasons and upon the following grounds:

First Ground

1. That because of mistake, inadvertence, surprise and excusable neglect the Receiver herein was

deprived of giving [57] consideration to and acting upon an offer to purchase said property by one, Theodore J. Ticktin, at a price of approximately one-third more than the bid of said D. B. Salisbury, to wit, the sum of \$80,000.00;

That your Receiver is informed and believes and upon such information and belief alleges that one, Theodore J. Ticktin, a financially responsible person, first learned of the proposed sale of the premises known as 915-955, 1003 Orange Grove Avenue, Pasadena, California, being the property referred to in this motion, on the morning of August 13, 1951; that said Ticktin was familiar with the location of said property and knew the value thereof and that immediately upon his learning of the proposed sale thereof and prior to the making of the minute order herein referred to, said Ticktin decided to make a bid or such bids as might be necessary to acquire said property at a purchase price up to \$80,000.00;

That said Ticktin attempted to communicate with counsel for this Receiver to tender such bid and did communicate with the secretary of Honorable James M. Carter, before whom said sale proceedings had been set, but that said Ticktin was unable to communicate his said intention to bid at such sale to either your Receiver, his counsel or the Court before whom the proceedings on such sale were then pending;

That had your Receiver had knowledge of the desire and intention of said Ticktin to make a bid for said property, he would have requested that the

proceedings on such sale be postponed to a time later in the day of said August 13, 1951, or to such other appropriate time as would have enabled said Ticktin to appear in Court and make his said bid;

That after the making of the minute order herein referred to, said Ticktin communicated with Leo V. Silverstein, Esq., one of the counsel of this Receiver, and advised him of the facts herein set forth; [58]

That thereafter and on Wednesday, August 15, 1951, this Receiver received from said Ticktin his offer to purchase said real property for the sum of \$80,000.00; that a copy of his offer is attached hereto, marked Exhibit "1"; that there was deposited with your Receiver the sum of \$10,000.00 referred to in said offer, which your Receiver now retains;

That relief should be given to this Receiver because of his mistake, inadvertence, surprise, excusable neglect, newly discovered facts and for other reasons justifying relief, pursuant to Rule 60 of the Rules of Civil Procedure of this Court; that said minute order should be set aside and appropriate orders and proceedings should be ordered and taken herein so as to enable this Receiver to accept the bid of said Theodore J. Ticktin herein referred to, or any bid in excess of said sum of \$80,000.00.

Second Ground

2. As a further, separate and second ground, this Receiver alleges:

Adopts and re-alleges the averments and allega-

tions set forth in his first ground herein as though fully set forth again herein;

That the price at which said real property was authorized to be sold to D. B. Salisbury was grossly inadequate and grossly disproportionate to the market value of said real property, as is shown by the bid of said Theodore J. Ticktin herein referred to;

That it would be unfair, unjust and inequitable and for this reason alone the minute order herein referred to should be vacated and set aside and further appropriate orders and proceedings should be made and taken in this proceeding so that this Receiver may obtain a just and adequate price for said real property.

This motion is based upon the records and files of this proceeding, which are by this reference made a part hereof, the affidavit of Theodore J. Ticktin filed herewith, the notice of [59] hearing of this motion and all other records and evidence which may properly be considered at the time of the hearing of this motion, including the prior order authorizing the sale of this property and payment of real estate broker's commissions.

/s/ JOSEPH JASPAN,

Attorney for Joseph F.

Ruggieri, Receiver.

Points and Authorities

The motion should be granted.

Vol. 8, *Cyclopedia of Federal Procedure*,
Second Edition, Sections 3588 to 3593;

Blackburn v. Selma R. Co.,
3 Fed. 689;
Baltimore Trust Co. v. Interocean Oil Co.,
29 Fed. Supp. 269;
American Trading & Production Corp. v.
Connor, 109 Fed. (2d) 871;
Van Senden v. O'Brien,
58 Fed. (2d) 689;
Klapprott v. United States of America,
335 U.S. 601; 93 L. Ed. 266, at p. 277, un-
der paragraph "Fourth";
Rule 60, Federal Rules of Civil [60] Pro-
cedure.

EXHIBIT No. 1

August 15, 1951.

The undersigned, Theodore J. Ticktin, of 5226 Lynwood Drive, Los Angeles, California, does hereby offer the sum of \$80,000.00 for the property known as 915-955, 1003 Orange Grove Avenue, Pasadena, California, more fully described in petition filed with the United States District Court in the matter of the United States of America against Canadian American Company, Inc.

This offer is made subject to the approval of the court and with full knowledge that a prior sale has already been conducted. The undersigned does hereby tender, as a deposit against said purchase, the sum of \$10,000.00 by cashier's check and agrees to pay the balance of the purchase price within thirty days after acceptance of his offer and approval by the Federal Court. The undersigned has

examined the property and agrees that no representations have been made by the Receiver as to the condition of the property or the uses to which it may be put.

The buyer represents that one broker brought about this offer and that the broker will be limited in his claim for commission to 2½%, it being understood that the claim to the other 2½% may be made by the William Wilson Company, who produced the original bid. The undersigned agrees to hold the Receiver harmless from all claims by any broker for more than 2½% commission. No commission shall be payable if this offer or any increased offer by this purchaser is not accepted and approved.

Title is to be delivered free and clear of all liens, taxes, except 1951-1952 city and county taxes. The property shall be delivered, however, subject to existing local zoning regulations, covenants and restrictions of record. Owner's policy of title insurance to be furnished by seller.

/s/ THEODORE J. TICKTIN. [61]

[Title of District Court and Cause.]

AFFIDAVIT OF THEODORE J. TICKTIN

State of California,

County of Los Angeles—ss.

Theodore J. Ticktin, being duly sworn, deposes and says:

That he lives at 5226 Linwood Drive, Los Angeles, California;

That he first learned of the proposed sale of the

premises known as 915-955, 1003 Orange Grove Avenue, Pasadena, California, on the morning of August 13, 1951; that he was familiar with the location of the property and knew the value thereof; that upon learning of the offer of this property for sale, deponent did then and there immediately decide to make a bid, or such bids as may be necessary to acquire the property;

That deponent did learn, however, by examining the advertisement that the bids were to be made in the Federal Court at 10:00 a.m. [62] on that morning and that it would be impossible for him to leave his home and arrive at the Court House by the time specified; that deponent did therefore call the Court House and spoke to a young lady who identified herself to be secretary for Judge James M. Carter, before whom the proceeding was pending; that deponent asked the young lady to advise the Court that he would like to make a bid at the present time or if that were not possible to have the hearing recessed for a sufficient length of time so that he could come down to the court and make the bid or bids in person; that deponent was advised that the Judge had just gone on the bench and that she could not communicate either with the Judge or with Mr. Silverstein, who apparently was in the Courtroom; that deponent has since been advised that the young lady did call the office of Mr. Silverstein and advise him of his call, but Mr. Silverstein was not available at that time as he was attending the hearing in court.

That deponent was prepared to bid up to

\$80,000.00 for this property and is still willing to make that offer; that deponent has tendered a written offer in that sum to the receiver, accompanied by a check for \$10,000.00, and asks this court to either consider his bid of \$80,000.00 or order a new sale, at which he may make an initial bid of \$80,000.00.

That, in the opinion of deponent, he was prevented from making the bid by circumstances beyond his control and believes that the Court should grant him the equitable relief herein sought.

/s/ THEODORE J. TICKTIN.

Subscribed and sworn to before me this 15th day of August, 1951.

[Seal] /s/ ESTHER DONNELLAN,

Notary Public in and for Said
County and State.

My Commission expires July 10, 1954.

[Endorsed]: Filed August 16, 1951. [63]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF MOTION TO VACATE AND SET ASIDE MINUTE ORDER AUTHORIZING RECEIVER'S SALE OF REAL PROPERTY AND FOR FURTHER PROCEEDINGS RE SALE AND ORDER SETTING TIME FOR HEARING AND FIXING NOTICE OF HEARING

State of California,
County of Los Angeles—ss.

Evelyn Lillie, being first duly sworn, deposes and says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above-entitled action; that affiant's business address is: 210 West Seventh Street, Los Angeles 14, California; that on the 17th day of August, 1951, before the hour of 5:00 o'clock p.m. affiant served copies of Motion to Vacate and Set Aside Minute Order Authorizing Receiver's Sale of Real Property and for Further Proceedings Re Sale and Order Setting Time for Hearing on Motion to Vacate Minute Order and Fixing Notice of Hearing on each of the following, to wit:

D. B. Salisbury, 1235 Crescent Heights Blvd.,
Los Angeles, [64] California;

United States of America, by mailing to Mr. Ernest A. Tolin, United States Attorney, 600 Federal Building, Los Angeles 12, California, attention, Mr. Eugene Harpole, Special Attorney;

State of California, by mailing to Mr. Edmund G. Brown, Attorney General of the State of California, 217 West First Street, Los Angeles, California;

County of Los Angeles, by mailing to Mr. Harold W. Kennedy, County Counsel of the County of Los Angeles, 1100 Hall of Records, Los Angeles 12, California;

City of Pasadena, by mailing to Mr. H. Burton Noble, City Attorney of the City of Pasadena, Room 202 City Hall, Pasadena 1, California;

Mr. Joseph F. Ruggieri, Receiver, c/o Mr. Joseph Jaspan, Counselor at Law, 16 Court Street, Brooklyn 2, New York,

by placing true copies thereof in envelopes addressed to each as above set forth, and by then sealing said envelopes and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made; that there is delivery service by United States Mail at the places so addressed and/or there is a regular communica-

tion by mail between the place of mailing and the places to addressed.

/s/ EVELYN LILLIE.

Subscribed and sworn to before me this 20th day of August, 1951.

[Seal] /s/ JUNE BISHOP,

Notary Public in and for Said
County and State.

[Endorsed]: Filed August 21, 1951. [65]

[Title of District Court and Cause.]

RECEIVER'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
HIS MOTION TO VACATE AND SET
ASIDE MINUTE ORDER AUTHORIZING
SALE OF REAL PROPERTY

Permission of the court having heretofore been obtained herein, the Receiver submits the following points and authorities in support of his motion to vacate and set aside minute order authorizing sale of real property, said motion having been set for hearing on August 22, 1951, before Honorable James M. Carter, and at said time continued for hearing to August 27, 1951, at the hour of 11:00 o'clock a.m.

The order made on August 13, 1951, in this proceeding was a discretionary order, not a final decision, and may be vacated and set aside.

Vol. 8 Cyclopedia of Federal Procedure,
Second Edition, Sections 3588 to 3593;

Subdivision (b) of Rule 54, of Federal Rules
of Civil Procedure; [66]

United States v. Otley, et al.,

116 Fed. 2d 958;

Blackburn v. Selma R. Co.,

3 Fed. 689;

Baltimore Trust Co. v. Interocean Oil Co.,

29 Fed. Supp. 269;

American Trading & Production Corp. v.

Connor, 109 Fed. (2d) 871;

Van Senden v. O'Brien,

58 Fed. (2d) 689;

The proceedings of August 13, 1951, should be
vacated on the grounds and for the reasons set forth
in Subdivision (b) of Section 60 of the Federal
Rules of Civil Procedure.

Rule 60, Federal Rules of Civil Procedure;

Klapprott v. United States of America,

335 U.S. 601; 93 L.Ed. 266, at p. 277, under
paragraph "Fourth."

Respectfully submitted,

JOSEPH JASPAN,

By /s/ LEO V. SILVERSTEIN,

Attorney for Receiver.

Affidavit of Service by Mail attached.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 24, 1951. [67]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF
RECEIVER'S MOTION

State of California,
County of Los Angeles—ss.

Leo V. Silverstein, being first duly sworn, deposes and says:

That affiant is one of the attorneys for the Receiver herein;

That affiant is informed and believes and upon such information and belief avers that on August 16, 1951, three days after the proceedings had in this court with reference to the sale of the property known as 915-955, 1003 Orange Grove Avenue, Pasadena, California, D. B. Salisbury filed with Title Insurance & Trust Company certain escrow instructions in escrow No. 3499383 in which said Salisbury signed a statement in which he said, among other things: "The closing of this escrow is contingent upon the seller obtaining [71] the necessary order confirming sale."

/s/ LEO V. SILVERSTEIN.

Subscribed and sworn to before me this 27th day of August, 1951.

[Seal] /s/ MARIE TREAIS,

Notary Public in and for Said
County and State.

Receipt of Copy acknowledged.

[Endorsed]: Filed August 27, 1951. [72]

United States District Court, Southern District of
California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

August 30, 1951

Present: The Honorable James M. Carter,
District Judge.

Nature of Proceedings

Court renders oral decision on motion of Receiver, heretofore taken under submission, to vacate and set aside sale and minute order of 8/13/51, and

Ruling

It is ordered that said motion is granted upon certain conditions; counsel for Receiver to prepare and present written order thereon forthwith.

EDMUND L. SMITH,
Clerk. [74]

[Title of District Court and Cause.]

ORDER ON MOTION OF RECEIVER TO VACATE MINUTE ORDER

The motion of Joseph F. Ruggieri, Receiver herein, to vacate and set aside minute order authorizing Receiver's sale of real property having come on regularly for hearing on August 22, 1951, and

having been duly considered, the Court makes the following Order:

It Is Hereby Ordered

(1) That the minute order in the proceedings for the sale of real property heretofore made in this proceeding on August 13, 1951, be and the same is hereby vacated and set aside and declared to be of no force or effect;

(2) That the Receiver sell said property at public auction in the manner provided by law on proceedings hereafter regularly to be taken herein and that the offer of Theodore J. Ticktin to purchase said property for the sum of \$80,000.00 be considered at such [75] sale;

(3) That this Order is conditioned upon the depositing with said Receiver by said Theodore J. Ticktin on or before September 4th, 1951, at 5 p.m., the additional sum of \$10,000.00, so that said Receiver shall have on hand from said Ticktin as a good faith deposit on his said bid the sum of \$20,000.00, which shall be retained by said Receiver should the said Ticktin fail to bid at the time of such sale of said property a sum of \$80,000.00 or more or, in lieu of the depositing of said additional sum of \$10,000.00, said Ticktin shall deposit with said Receiver a good and sufficient undertaking in form and with sureties approved by this Court, in the sum of \$80,000.00, conditioned that said Ticktin and the Sureties on said undertaking shall be firmly bound to the Receiver in a sum equal to

the difference between \$80,000.00 and the purchase price received by said Receiver at such sale;

(4) That the Receiver shall pay to The William Wilson Company, out of the proceeds of said sale, the sum of \$3,000.00, as payment in full of its real estate broker's commission for services rendered in connection with the sale of said real property;

(5) That the Receiver shall return to D. B. Salisbury the sum of \$6,100.00, heretofore deposited with the Receiver by said Salisbury, and from the proceeds of the sale of said property pay to said D. B. Salisbury the additional sum of \$500.00 as counsel fees for the counsel of said D. B. Salisbury for services rendered in this matter since August 13th, 1951, and such reasonable escrow expenses as may have been incurred by said D. B. Salisbury since August 13, 1951, in a sum not exceeding \$150.00.

Dated this 31st day of August, 1951.

/s/ JAMES M. CARTER,

United States District Judge.

[Endorsed]: Filed August 31, 1951. [76]

[Title of District Court and Cause.]

REPORT OF APPRAISER

The undersigned duly appointed, qualified, and acting Inheritance Tax Appraiser for the State of

California, having been appointed to appraise the subject real property in the above-entitled action pursuant to order dated July 12, 1951, submits his report as follows:

The undersigned Appraiser has viewed and appraised the real property described as follows:

Parcel 1, Lot 2 of P. C. Baker's Subdivision in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 53, Page 8 of Miscellaneous Records in the office of the County Recorder of said County. [77]

Parcel 2. Those portions of the 25.78 acre tract marked Matthews and of the 30-acre tract marked Lockhart and of the parcel marked Reservation 1.14 acre, all in Division E of the San Gabriel Orange Grove Association lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records in the office of the County Recorder of said county, and of a portion of W. G. McGregory's Subdivision, as per map recorded in Book 18, Page 44 of Miscellaneous Records in the office of the County Recorder of said County, described as a whole as follows: Beginning in the west line of Orange Grove Avenue, 100 feet wide at the northeast corner of land described in deed to John S. Cravens recorded in Book 1232, Page 104 of Deeds, records of said County; thence northerly along the east line of Lot 1 of said W. G. McGregory's Subdivision to the northeast corner of said Lot in the dividing line between said Matthews and Lockhart Tracts; thence continuing

northerly along the west line of Orange Grove Avenue to a line parallel with and distant 3 feet northerly, measured at right angles from said dividing line; thence westerly parallel with said dividing line, 484 feet; more or less to a line drawn at right angles to said dividing line from a point therein distant westerly 80 feet from the northwest corner of Lot 1 of said W. G. McGregory's Subdivision; thence southerly along said line drawn at right angles 3 feet to a point in said dividing line which point is the northeast corner of land described in deed to Lilly Busch, recorded in Book 2011, Page 211 of said Deed Records; thence along the east line of said land of Busch South $40^{\circ} 15'$ East 163.6 feet, more or less, to the westerly prolongation of the north line of said land described in deed to John S. Cravens first above mentioned; thence [78] easterly along said prolongation and north line 483.5 feet, more or less, to the point of beginning.

Parcel 3. That portion of the 25.78 acre tract marked "Matthews" in Division "E" of the San Gabriel Orange Grove Association Lands, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 2, Page 556, et seq., of Miscellaneous Records, in the office of the County Recorder of said County, described as follows: Beginning at a point in the west line of Orange Grove Avenue as now established, 100 feet wide, at the southeast corner of the land described as Parcel No. 4 in deed to Ernest P. Nolting, et ux., recorded in Book 20160, Page 25, Official Records of said County; thence westerly along the

southerly line of said land of Nolting to a point in the easterly line of the land described in deed to Louise G. Hill, et al., recorded in Book 9906, Page 289 of said Official Records; thence southerly along said easterly line of said land of Hill to a point in the southerly line of said 25.78 acre tract; thence easterly along the south line of said 25.78 acre tract, 42.38 feet, more or less to the southwest corner of the land described in deed to Arthur H. Fleming recorded in Book 2392, Page 179 of Deeds; thence north 3 feet to the northwest corner of said land of Fleming; thence easterly parallel with the southerly line of said 25.78 acre tract, a distance of 483.78 feet, more or less, to a point in the said west line of Orange Grove Avenue; thence northerly along the westerly line of said Avenue 276.46 feet, more or less to the point of beginning. [79]

As of this date, the undersigned Appraiser finds the fair market value of the above-described real property to be Sixty-Five Thousand Dollars and no/100 (\$65,000.00).

/s/ ELDRED L. MEYER.

Subscribed and sworn to before me, this 1st day of August, 1951.

[Seal] /s/ PAUL ARMOND,
Notary Public in and for the County of Los Angeles,
State of California.

My Commission expires October 10, 1954.

[Endorsed]: Filed September 4, 1951. [80]

In the District Court of the United States in and
for the Southern District of California, Central
Division

Civil No. 12,703-BH

In the Matter of the Action Commenced in the
United States District Court for the Eastern
District of New York entitled:

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CANADIAN AMERICAN COMPANY, INC.,
et al.,

Defendants.

ORDER FOR SALE OF REAL PROPERTY
COMMONLY KNOWN AS 915-955-1003
ORANGE GROVE AVENUE, PASADENA,
CALIFORNIA, BY RECEIVER AT PUB-
LIC SALE

Upon the annexed petition of Joseph F. Ruggieri,
Receiver herein, and upon the exhibits attached
thereto, and the orders of the United States District
Court for the Eastern District of New York, it is

Ordered that Joseph F. Ruggieri, as Receiver
appointed in the action entitled "In the Matter of
the Action Commenced in the United States Dis-
trict Court for the Eastern District of New York,
Entitled United States of America, Plaintiff, vs.
Canadian American Company, Inc., et al., Defend-

ants,"—sell, at public auction, to the highest bidder or bidders, in Courtroom No. 8 in the United States Post Office and Court House Building, at Los Angeles, California, on Monday, the 29th day of October, 1951, at the hour of ten [81] o'clock a.m., Pacific Standard Time—all of said Receiver's right, title and interest in and to the premises commonly known as 915-955-1003 Orange Grove Avenue, Pasadena, California, and more particularly described in said annexed petition of Joseph Ruggieri, Receiver herein, and the "Notice of Sale" hereinafter referred to; and it is further

Ordered that the offer of Theodore J. Ticktin to purchase said property, referred to in said Receiver's petition, be considered at said time; and it is further

Ordered that this Court will consider such other and further business as may properly come before the Court at said time in connection with such sale; and it is further

Ordered that notice of this sale be mailed within ten (10) days from the date of this Order to all parties who have appeared in this proceeding in this District, and to the Attorney General of the State of California, the County Counsel of the County of Los Angeles, California, and the City Attorney of the City of Pasadena, California; and it is further

Ordered that a copy of said notice of sale be published in the Los Angeles Daily Journal, a newspaper regularly published in the County of Los Angeles, California, once a week for four consecu-

tive weeks commencing on September 24, 1951; and it is further

Ordered that said notice shall be substantially in the form and content of the notice hereto annexed, which this court hereby approved; and it is further

Ordered that in the conduct of such sale the Receiver may pay a real estate brokerage commission in a sum equal to two and one-half per cent (2½%) of the sales price to the broker producing the successful bid.

Dated at Los Angeles, California, this 20th day of September, 1951.

/s/ BEN HARRISON,

United States District Judge.

Docketed and Entered Sept. 21, 1951.

[Endorsed]: Filed Sept. 21, 1951. [82]

[Title of District Court and Cause.]

PETITION FOR ORDER AUTHORIZING
SALE OF REAL PROPERTY COMMONLY
KNOWN AS 915-955-1003 ORANGE GROVE
AVENUE, PASADENA, CALIFORNIA, BY
RECEIVER AT PUBLIC SALE

Comes now Joseph F. Ruggieri, Receiver in the action entitled United States of America against Canadian American Company, Inc., et al., by and through his attorney, Joseph Jaspan, alleges and represents to the Court as follows:

I.

That by an order dated December 5, 1950, made and entered in the United States District Court for the Eastern District of New York, petitioner was appointed receiver of the assets and property of James Albert Wigmore and Canadian American Company, Inc.

II.

That by order dated February 9, 1951, the receivership was extended and petitioner was also appointed Receiver of the assets of National Munitions Company of Eldred, Pennsylvania. [87]

III.

Pursuant to Title 28 U.S.C. Section 754, copies of the aforementioned orders and the complaints in said action were filed with the Clerk of the United States District Court for the Southern District of California.

IV.

That on December 5, 1950, Wagner Realty Company was the owner of the property known as 915-955-1003 Orange Grove Avenue, Pasadena, California, which property is more fully described in the attached exhibit, Marked Exhibit "1."

That petitioner became the owner of the outstanding issued stock of Wagner Realty Company on December 5, 1950.

That by resolution of Wagner Realty Company said property was conveyed to and title was vested in Joseph F. Ruggieri as Receiver by grant deed

duly recorded in the office of the County Recorder of Los Angeles County, on March 1, 1951.

V.

That by order entered in the United States District Court for the Eastern District of New York, the Receiver was authorized to sell and convey said property to the highest bidder at a judicial sale, the time, place and manner of which are to be fixed by an order of the United States District Court for the Southern District of California.

VI.

That the Receiver herein obtained an offer of \$60,110.00 from D. B. Salisbury for said property, consisting of approximately eight acres, upon which there is presently one structure; that said offer was presented to this Court in certain proceedings had herein for the sale of said property by petition of this Receiver, and a hearing thereon was held before the Honorable James M. Carter, on August 13, 1951, considered by the Court and sale of said property ordered made to said D. B. Salisbury; that all of said proceedings [88] were thereafter set aside upon order of this Court duly made in this proceeding, reference to which is hereby made for further particulars;

That the Receiver herein has obtained an offer to purchase said property from Theodore J. Ticktin for the sum of \$80,000.00, a copy of said offer being hereto attached, marked Exhibit "2"; that since the date of said offer, pursuant to the order

of this court, and on August 31, 1951, said Theodore J. Ticktin deposited with this Receiver the further sum of \$10,000.00, which additional sum your Receiver is holding pursuant to said offer and the order of this court made herein in connection therewith.

VII.

That said offer is conditioned upon approval of the Court and subject to further bidding at a public judicial sale.

VIII.

That said offer was produced by Benjamin A. Satoznik, licensed real estate broker.

That the Receiver has agreed, subject to the approval of the Court, to pay a real estate broker's commission of 2½% in the event the bid of said Theodore J. Ticktin is accepted by this court.

IX.

The Receiver respectfully prays that a public sale be held in this Court, in a department thereof, and at a time to be fixed by an appropriate order of this Court, at which the bid of said Theodore J. Ticktin may be considered and such other and further bids as may be made for said property may likewise be considered.

Wherefore, Petitioner, as Receiver, respectfully prays that the property described in the attached Exhibit "1" be sold at public judicial sale in the United States District Court, for the Southern District of California, in accordance with the terms of the attached order.

Dated September 17, 1951.

/s/ JOSEPH JASPAN,
Attorney for Receiver.

[Endorsed]: Filed September 20, 1951. [89]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given That D. B. Salisbury, the bidder to whom the sale was made and ordered by the Court on August 13, 1951, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order and the whole thereof made by this Court on August 31, 1951, and dated, filed and entered in this action August 31, 1951, vacating the order therein referred to made in this proceeding on August 13, 1951.

/s/ MARVIN OSBURN,
BERNARD C. BRENNAN,
By /s/ MARVIN OSBURN,
Attorneys for
D. B. Salisbury.

[Endorsed]: Filed September 26, 1951. [93]

[Title of District Court and Cause.]

ORDER SETTING TIME FOR HEARING
ON RECEIVER'S MOTION FOR ORDER
REQUIRING APPELLANT, D. B. SALIS-
BURY, TO FURNISH AND FILE SUPER-
SEDEAS BOND AND FIXING NOTICE OF
HEARING

Upon reading the annexed motion and good cause
appearing therefor,

It Is Hereby Ordered:

(1) That the hearing on said motion be and the
same is hereby set for and will be heard on the
22nd day of October, 1951, at the hour of 10 o'clock
a.m., in Courtroom No. 8, before Honorable Ben
Harrison, United States District Judge;

(2) That the time for giving notice of such
hearing shall be and it is hereby shortened so that
the same may be given by serving a copy of the
annexed motion, a copy of this order, and a copy
of the affidavit of Leo V. Silverstein, dated October
17, 1951, by depositing the same, with postage
thereon fully prepaid, in the [99] United States
mail at Los Angeles, California, on or before the
hour of five o'clock p.m. on October 17, 1951, to
each of the following, to wit:

Theodore J. Ticktin, 5226 Linwood Drive, Los
Angeles 27, California;

Marvin Osburn and Bernard C. Brennan,
attorneys for D. B. Salisbury, 210 West 7th
Street, Los Angeles 14, Calif.;

Robert H. Dunlap, attorney for William Wilson Company, 800 First Trust Building, Pasadena, California;

Mr. Ernest Tolin, United States Attorney, 600 Federal Building, Los Angeles 12, California, attention Mr. Eugene Harpole, Special Attorney;

Harold W. Kennedy, County Counsel, County of Los Angeles, 1100 Hall of Records, Los Angeles 12, California, attention Andrew O. Porter;

Edmund C. Brown, Attorney General of the State of California, 217 West First Street, Los Angeles 12, California, attention Mr. Edward Sumner;

Mr. H. Burton Noble, City Attorney for the City of Pasadena, Room 202, City Hall, Pasadena 1, California, attention Mr. Robert E. Michalski.

That service aforesaid shall constitute and be service of notice of the hearing on said motion.

Dated October 17, 1951.

/s/ LEON R. YANKWICH,
United States District
Judge. [100]

[Title of District Court and Cause.]

RECEIVER'S MOTION FOR ORDER REQUIRING APPELLANT, D. B. SALISBURY, TO FURNISH AND FILE SUPERSEDEAS BOND

Comes now Joseph F. Ruggieri, Receiver, in the action entitled "In the Matter of the Action Commenced in the United States District Court for the Eastern District of New York, Entitled United States of America, Plaintiff, vs. Canadian American Company, Inc., et al., Defendants,"—by and through his attorneys Joseph Jaspan and Leo V. Silverstein, and moves the Court for an order requiring Appellant, D. B. Salisbury, to furnish and file a good and sufficient Supersedeas Bond in form and amount to be approved by this Court, indemnifying said Joseph F. Ruggieri as such Receiver against all loss, cost, charge and expense suffered or incurred by him, or which may hereafter be suffered or incurred by him, by reason of the filing of that certain Notice of Appeal and the further prosecution of said [101] appeal, by which said D. B. Salisbury appeals to the United States Court of Appeals for the Ninth Circuit, from the order and the whole thereof, made by this Court on August 31, 1951, and dated, filed and entered in this action August 31, 1951, vacating the Order made in this proceeding on August 13, 1951, in the penal sum of not less than \$25,000.00.

This motion is based upon all of the records and

files of this proceeding which are by this reference made a part hereof, the affidavit of Leo V. Silverstein, filed herewith, the order setting time of hearing of this motion, and all other records and evidence which may properly be considered at the time of the hearing of this motion.

JOSEPH JASPAN, and
LEO V. SILVERSTEIN,
By /s/ LEO V. SILVERSTEIN,
Attorneys for Joseph F.
Ruggieri, Receiver.

Points and Authorities

A Supersedeas Bond should be required.

Rule 73(d) and (e), Federal Rules of Civil
Procedure.

[Endorsed]: Filed October 17, 1951. [102]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF RECEIVER'S MOTION TO REQUIRE APPELLANT TO FURNISH SUPERSEDEAS BOND

State of California,
County of Los Angeles—ss.

Leo V. Silverstein, being first duly sworn, deposes and says:

That affiant is one of the attorneys for Joseph F. Ruggieri, Receiver, in the above-entitled matter;

that upon the petition of the receiver, this Honorable Court on the 12th day of July, 1951, made and entered its order for sale of real property by Receiver at public sale, embracing all of the Receiver's right, title and interest in and to the premises commonly known as 915-955-1003 Orange Grove Avenue, Pasadena, California, more particularly described in the Petition of Joseph F. Ruggieri, Receiver herein, and "Notice of Sale" given pursuant to said order, likewise dated the 12th day of July, 1951, [103] which property, for convenience, is hereinafter in this affidavit referred to as the "Orange Grove Avenue Property";

Reference to the petition of the Receiver for an order for sale of said Orange Grove Avenue property is hereby made for further particulars in all respects as though set forth in full herein;

That one D. B. Salisbury, under date of May 21, 1951, made an offer in writing to said Receiver to purchase said Orange Grove Avenue property for the sum of \$60,110.00;

That said offer, in part, provided as follows:

"This offer is made subject to the conveyance of good and sufficient title, seller to furnish customary policy of title insurance at a liability of \$60,110.00 showing property free and clear of all encumbrances excepting general and special City and County taxes of the fiscal year 1951-1952 and conditions and restrictions of record, if any, as above provided.

"Taxes of the fiscal year 1951-1952 to be prorated and paid by the buyer from date of confirmation of sale.

“It is understood that this property is owned by Joseph F. Ruggieri, Receiver, in the matter of the United States of America vs. Canadian American Co., Inc., et al., and that the completion of this purchase is subject to the confirmation by the appropriate United States District Court, it being understood that you will take all necessary legal steps immediately to procure confirmation of sale at the earliest possible date.

“It is further agreed that in the event the title is not delivered to us by reason of failure of the Court to approve or by reason of the fact that some other purchaser shall have made a higher bid at a judicial sale or in accordance with the terms of any court order, or by reason of the unmarketable title, the obligation of the Receiver hereunder, or of the Offeror hereunder, shall both be cancelable and both shall be discharged of any liability on their part upon the return of the deposit made hereunder. [104]

“Seller to furnish a contour survey by a licensed surveyor at his expense.

“If this offer is accepted, we shall take title in the names of D. B. Salisbury and Verne Salisbury, his wife, as joint tenants.

“It is a part of this offer that the completion of this sale and the delivery of the Title Policy of the subject property hereunder shall be completed on or before July 31st, 1951, or the deposit funds be returned to the offeror.”

That under date of July 16th, 1951, said D. B.

Salisbury signed and delivered to the Receiver a document in words and figures as follows:

“1235 Crescent Hgts. Blvd.,

“Los Angeles, California,

“July 16, 1951.

“Mr. Joseph Ruggieri,

“c/o Mr. Joseph Jaspan,

“16 Court Street,

“Brooklyn 2, N. Y.

“Dear Mr. Ruggieri:

“We refer to our letter to you dated May 21st, 1951, in which we offered to purchase certain property in the City of Pasadena. This offer expires July 31st, 1951.

“We now understand from Mr. Clay Robbins that August 13th, 1951, has been set as the date for the final court hearing in this matter, at which approval will be given for the sale of the subject property. We, therefore, hereby extend the time limit on our offer to expire at midnight on August 13th, 1951, all other terms and conditions of our letter of May 21st, 1951, to remain unchanged. Further, in the event the court approves the sale of the subject property to us by midnight August 13th, we will allow a further period to midnight, August 31st, 1951, for completion of documentation and delivery of clear title.

“D. B. SALISBURY.” [105]

That pursuant to said order authorizing sale and the notice thereof, proceedings were had in this

court before the Honorable James M. Carter on August 13th, 1951, whereby the said offer of Salisbury was approved by this Court;

That thereafter and on the same day one Theodore J. Ticktin offered to purchase said property for the sum of \$80,000.00 and on August 15th, 1951, made a written offer to said Receiver to purchase said Orange Grove Avenue property for the sum of \$80,000.00, and deposited with the Receiver the sum of \$10,000.00 as a good faith deposit in connection with said offer;

That thereafter the Receiver made a motion before the Honorable James M. Carter to vacate and set aside the minute order authorizing the Receiver's Sale of said property to Salisbury and the hearing thereon was regularly noticed and heard on August 22nd, 1951, before the Honorable James M. Carter, and an order was duly entered in this proceeding, dated August 31st, 1951, vacating and setting aside the minute order made herein on August 13th, 1951, authorizing the sale of said Orange Grove Avenue property to said Salisbury;

Reference is hereby made to the affidavit of Theodore J. Ticktin, sworn to on the 15th day of August, 1951, the motion of Joseph F. Ruggieri as Receiver to vacate and set aside the minute order authorizing Receiver's sale of real property and for further proceedings re sale, filed herein on August 16, 1951, and the order on motion of Receiver to vacate minute order dated August 31st, 1951, are on file in this proceeding, and the same are hereby incorporated herein and made a part

of this affidavit as though set forth in full herein;

That thereafter, pursuant to said order, upon motion of Receiver to vacate minute order, said Ticktin deposited with the Receiver the additional sum of \$10,000.00, and the Receiver filed a petition for an order authorizing the sale of said Orange Grove Avenue property at public sale based upon the offer of said Ticktin;

That an order for the sale of said real property, pursuant [106] to said petition, was granted on September 20th, 1951, by the Honorable Ben Harrison, and the sale thereon is now set for Monday, October 29th, 1951, in Court Room No. 8 of this Court at the hour of ten o'clock a.m.;

That on the 4th day of September, 1951, the Receiver returned to said D. B. Salisbury upon his demand the sum of \$6,100.00, being the deposit made by him at the time of his offer to purchase said Orange Grove Avenue property;

That said offer of Theodore J. Ticktin requires that the Receiver, before the consummation of such sale to him, shall furnish and deliver to him an Owner's Policy of Title Insurance; that before any sale—whether it be to Theodore J. Ticktin or anyone else—may be consummated, it will be necessary for the Receiver to obtain and furnish to any such purchaser an Owner's Policy of Title Insurance, issued by a title insurer authorized to transact title insurance business in the State of California;

That on September 26th, 1951, said D. P. Salis-

bury filed herein Notice of Appeal, by which he purportedly appeals to the United States Court of Appeals for the Ninth Circuit, from the order and the whole thereof made by this court on August 31st, 1951, and dated, filed and entered in this action August 31, 1951, vacating the minute order herein referred to, made in this proceeding on August 13, 1951.

That affiant is informed and believes and so avers that as long as said purported appeal is pending, no company authorized to issue Owner's Policies of Title Insurance will issue an Owner's Policy of Title Insurance acceptable to said Ticktin and which the Receiver is obligated to furnish upon the consummation of the sale of said Orange Grove Avenue property to said Ticktin, nor will any such title company issue an acceptable Owner's Policy of Title Insurance to any other successful bidder at the sale now set for October 29th, 1951, hereinabove referred to. [107]

That said D. B. Salisbury should be required to furnish and file herein a Supersedeas Bond, in form and amount approved by this Court, indemnifying the Receiver against all loss, cost, charge and expense suffered or incurred by him and which may hereafter be suffered or incurred by him by reason of the filing of said Notice of Appeal and further prosecution of said appeal, in a penal sum of not less than \$25,000.00.

That this affidavit is made in support of the Receiver's motion, filed concurrently herewith, for

an order requiring the appellant D. B. Salisbury to furnish and file a Supersedeas Bond.

Dated October 17, 1951.

/s/ LEO V. SILVERSTEIN,

Subscribed and sworn to before me this 17th day of October, 1951.

[Seal] /s/ MARIE TREAIS,

Notary Public in and for Said
County and State.

[Endorsed]: Filed October 17, 1951. [108]

United States District Court, Southern District of
California, Central Division

[Title of Cause.]

MINUTES OF THE COURT

October 22, 1951

Present: The Honorable Ben Harrison,
District Judge.

Nature of Proceedings

Hearing on motion of Joseph F. Ruggieri, Receiver, for an order requiring appellant D. B. Salisbury, to furnish and file supersedeas bond, in the sum of not less than \$25,000.00, pursuant to motion, order setting time for service and hearing of said

motion, and affidavit of Leo V. Silverstein, filed 10/17/51.

Ruling

Court fixes supersedeas bond in the amount of \$20,000.00.

EDMUND L. SMITH,
Clerk. [111]

[Title of District Court and Cause.]

ORDER ON MOTION OF RECEIVER FOR ORDER REQUIRING APPELLANT, D. B. SALISBURY, TO FURNISH AND FILE SUPERSEDEAS BOND

The motion of Joseph F. Ruggieri, Receiver herein, for an Order Requiring Appellant, D. B. Salisbury, to furnish and file Supersedeas Bond having come on regularly for hearing on October 22nd, 1951, and having been duly considered, the Court makes the following Order:

It Is Hereby Ordered:

- (1) That the said motion is hereby granted;
- (2) That D. B. Salisbury shall furnish the Receiver and file herein, on or before 5:00 o'clock p.m., Friday, October 26, 1951, a bond or undertaking in the penal sum of \$20,000.00, substantially in the form attached to this Order, duly executed by said D. B. Salisbury with two individual sureties or with a corporate surety, which said [112]

bond shall first be approved by this Court, or in lieu of said bond he shall deposit \$20,000.00 cash with the Clerk of this Court as provided for by the Rules of this Court;

(3) That upon the furnishing and filing of said bond so approved, further proceedings for the sale of the property described in the petitions on file herein and commonly known and designated as the "Orange Grove Avenue Property" shall be stayed until the final disposition of the appeal taken by said D. B. Salisbury by Notice of Appeal filed herein on September 26th, 1951—said appeal being from the Order, and the whole thereof, made by this Court on August 31st, 1951, and dated and filed and entered in this action August 31st, 1951, vacating the Order made in this proceeding on August 13th, 1951, all relating to said Orange Grove Avenue Property;

(4) That should said bond or undertaking be not furnished and filed in the form and within the time as required by this Order the sale of said Orange Grove Avenue Property shall be made pursuant to the Orders of this Court heretofore or hereafter made.

Dated October 25, 1951.

/s/ BEN HARRISON,
Judge.

Approved as to Form:

MARVIN OSBURN and

BERNARD C. BRENNAN,

By /s/ MARVIN OSBURN,

Attorneys for D. B. Salisbury.

[Endorsed]: Filed October 25, 1951. [113]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given That D. B. Salisbury, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order and the whole thereof made by this Court in Minute Order made October 22, 1951, and by signed Order made October 25, 1951, which Order directs that Appellant D. B. Salisbury be required to furnish and file supersedeas bond.

/s/ MARVIN OSBURN,

BERNARD C. BRENNAN,

By /s/ MARVIN OSBURN,

Attorneys for

D. B. Salisbury. [118]

[Endorsed]: Filed Oct. 26, 1951.

In the United States District Court, Southern
District of California, Central Division

No. 12,703

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CANADIAN AMERICAN COMPANY, INC.,
et al.,

Defendants.

Honorable James M. Carter, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Monday, August 13, 1951

Appearances:

For the Plaintiff:

ERNEST A. TOLIN,

United States Attorney, by

EDWARD R. McHALE,

Asst. United States Attorney.

For the Receiver:

LEO V. SILVERSTEIN, ESQ.

For Respondents:

EDMUND G. BROWN,

Attorney General, State of California;

HAROLD W. KENNEDY,

County Counsel, County of

Los Angeles;

H. BURTON NOBLE,

City Attorney, City of Pasadena.

The Court: You may proceed.

The Clerk: 12,703, United States against Canadian-American Company and others for public auction of property known as 915, 955 and 1003 Orange Grove Avenue, Pasadena, and consideration of other matters.

There is also the consideration of the offer of D. B. Salisbury.

Mr. Silverstein: I am appearing on behalf of the receiver.

The Court: This is a public sale that has been heretofore noticed in the courtroom of Judge Ben Harrison, who is now on vacation, and therefore been transferred to this court.

It involves real property which has been described in the notice of sale, and that notice of sale is on file with the clerk of this court.

Mr. Silverstein, do you have a copy of the notice of sale?

Mr. Silverstein: Yes, your Honor.

The Court: Will you hand it to the clerk?

Mr. Silverstein: Yes, your Honor.

The Court: The notice of sale indicates there are involved three parcels of land. The street address of these parcels is 915, 955 and 1003 Orange Grove Avenue, Pasadena. Anyone more particularly interested in the description may inspect [2*] the notice of sale in the original file, a copy of which has been handed to the clerk and which I have in my possession, or you may inspect the copy that is here in court.

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

The notice states:

“Notice is further given that D. B. Salisbury has offered to purchase said real property and pay therefor the sum of \$60,110, all more particularly set forth in the petition of this receiver filed in said proceedings on July 12, 1951.”

Mr. Silverstein: If your Honor please, with reference to any brokerage features that are set forth in the petition——

The Court: What is set forth about that?

Mr. Silverstein: With reference to any brokerage commissions.

The Court: I don't understand you. What was set forth in the petition?

Mr. Silverstein: As to what brokerage commissions, if any, are to be paid.

The Court: And what is that?

Mr. Robbins: The brokerage commission provides that on the original bid there shall be a commission paid of five per cent to the broker who obtained that bidder. If the sale is confirmed to someone other than the original bidder and the broker who produces the purchaser under the bid shall receive one-half of that commission and the other half shall go to the [3] broker who originated the original bid.

The Court: Is that provided in the order by Judge Harrison?

Mr. Robbins: That is provided in the order, yes, sir.

The Court: All right. There has been a bid made to the receiver of \$60,110.

Is this a cash bid? And I take it that under the ordinary practice there would have to be 10 per cent of that amount deposited at the time the bids are made and the balance to be paid at the time of the execution of the order by the court.

Do I hear any higher or better bid for this property?

A Voice: What is the necessary amount to be raised?

The Court: The law does not require in these matters, in the sale of property in Federal Court, so I am informed by the receiver's attorney, that there be any fixed amount of a new bid. That is, a new bid doesn't have to exceed the old bid in any fixed amount.

However, I suggest that bidders probably know what they are prepared to bid for this property and therefore make some bid in an amount that they think it is approximately worth without taking up a lot of time of the court. Do you understand that?

A Voice: Yes, sir.

The Court: Do I hear any higher or better bid for these three parcels of property than that listed in the notice of sale and in the file in this case?

(No response.) [4]

The Court: I am ready to sell this property.

A Voice: We decided not to bid.

The Court: Let the record show the gentleman who asked the question heretofore has been con-

ferring with several other men and now says he has decided not to bid.

Any other bids other than the one listed in the notice of sale for \$60,110? If not, the property is sold to D. Salisbury for \$60,110.

A formal order should be drawn, Mr. Silverstein, and submitted for signature.

Mr. Silverstein: Yes, your Honor. [5]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 17th day of August, A.D. 1951.

/s/ J. D. AMBROSE,
Official Reporter.

[Endorsed]: Filed November 1, 1951.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Thursday, August 30, 1951

Appearances:

For the Plaintiff:

ERNEST A. TOLIN, ESQ.,

United States Attorney, by

EUGENE HARPOLE, ESQ.,

Special Attorney, Bureau of Internal
Revenue.

For Receiver:

LEO V. SILVERSTEIN, ESQ., and

CLAY ROBBINS, ESQ.

For D. B. Salisbury:

BRENNAN & CORNELL, by

B. C. BRENNAN, ESQ.

Also Present:

GEORGE READ,

Representative of The William Wilson
Company.

The Court: Civil No. 12,703-BH, in the matter of the action commenced in the United States District Court for the Eastern District of New York, entitled United States of America, Plaintiff, vs. Canadian American Company, Inc., et al., Defendants. Have you the appearances of counsel?

The Clerk: Yes, I have.

The Court: I have given some consideration to this matter and I have written down here generally my views on it.

It is the general rule in the federal courts that a judicial sale will be confirmed where it has been properly conducted unless the price is so grossly inadequate as to shock the conscience of the court. Where the price is not so grossly inadequate, and the facts show that there were mistakes, surprises, et cetera, then the sale may be set aside, if the confirmation has not yet taken place. Where the confirmation has occurred, then a stronger showing is necessary.

In speaking of a price which is grossly inadequate, the courts are referring to the value of the property and not the differences in the prices bid. But the court may look at the differences in the bids to determine the value of the property.

We come to the Stanley Engineering Corporation case, 164 F. 2d 316, and consider it. All the other cases are distinguishable either because the confirmation had already taken [3*] place, or the lower court had refused to set aside the prior sale, and the appellate court would not reverse on appeal, saying that this was a matter which was in the sound discretion of the lower court.

The question is: Is the Stanley case distinguishable from ours? First, there is a difference in price. In the Stanley case the difference between the original bid and the final bid was about \$10,000. In our case it was \$20,000. In the Stanley case there was

* Page numbering appearing at top of page of original Reporter's Transcript.

spirited bidding. In our case there was an opportunity for bidding but there was only one bid.

In the Stanley case there was no evidence that the Gaby Company, the highest bidder, attempted to be at the sale or that it had made any effort to be at the sale or that it attempted to stop the sale. The only fact that is stated is that it appeared the following day before confirmation and tendered a higher bid.

In our case there is evidence that Mr. Ticktin endeavored to stop the sale by calling my office and informing the secretary to tell the judge that he wanted to make a bid on the property and made inquiry about postponing the sale until such time as he could get there.

There was a misunderstanding on the part of the secretary, and through this misunderstanding that message was not conveyed to the court until the sale had already been made, and the [4] mistake was made at this point.

Had the message reached the court at any time prior to the actual closing of the sale, the court would have stopped the sale and given Mr. Ticktin a reasonable time to tender his bid.

It was a mistake, therefore, by an agent of the court in failing to transmit the message in time to stop the proceedings. This, I think, is sufficient ground, coupled with the increase in price, to warrant the court to refuse to confirm the sale and order a resale.

In the Pewabic Mining Co. case the holding does not seem to me to be to the contrary. In that case,

the telegram reached the referee in due time, but the referee with knowledge of the request held the sale anyhow, and the court with knowledge of the request confirmed the sale. The Supreme Court held that this was properly within the discretion of the lower court.

Had the message in our case reached the court in time, this court would have acted differently than the lower court acted in the Pewabic Mining Co. case. In other words, this court would have delayed the sale a reasonable time so that the bid could have been tendered. I don't believe that would be an abuse of discretion.

So here, the court would have delayed the sale until Mr. Ticktin had a reasonable time to appear and tender a bid, had [5] the message been delivered.

I am, therefore, going to set aside the sale and order a resale of the property and a republication of the sale, but I am going to do it upon conditions:

Number one. The broker in the case of the original sale earned a fee. The present bid makes provision for only a portion of the broker's fee that he earned, according to one conditional fee. That broker on the original sale shall be protected to the full extent of 5 per cent commission that he earned on the \$60,000.

Secondly, on condition that the payment of expenses of resale, for advertising and whatever other expenses are involved in the resale, be paid by the second bidder.

Thirdly, as an alternative situation, I want some sort of a guarantee that no loss will be suffered to this estate by setting aside the first sale. The first bid was for \$60,110, and the second bid was for \$80,000. The \$10,000 deposit has been made. There should either be a bond posted for the second sale so that this new bidder will bid the \$80,000 which he has tendered, and then, if he does not bid that amount, the estate will be protected, the receivership will be protected, or, in lieu of a bond, a sufficient deposit of money to represent the difference between the \$60,000 bid and the \$80,000 bid. In other words, I think that this new bidder ought to put on the line either the \$20,000 difference [6] between the \$60,000 and the \$80,000, or in the alternative give a bond that he will bid and pay the \$80,000 on the second sale. And if he makes a deposit of the money or puts up the bond, it should be so conditioned that in the event the new bidder doesn't go through with his offer, that \$20,000 inures to the benefit of this receivership as a penalty. If the bond of \$80,000 is put up and the property brings \$70,000, the penalty on the bond would only be \$10,000. If, on the other hand, the cash is put up and on the new bid the property brings \$70,000, then also the penalty should be the \$10,000, although the \$20,000 was deposited.

Do you understand what I mean?

It is going to be a little difficult to phrase, but the receiver estate should be protected for this

differential between the \$61,000 bid and the \$80,000 secondly bid.

If on a resale, however, the second buyer should default and not bid, but a sale should occur at \$70,000, then this new purchaser I think should only be penalized for the difference between the amount of the new sale and the \$80,000.

Now, fourthly, I want to consider, and this may take a moment or two, this matter of any losses that the first bidder may have incurred. I do not have any precedent to go on, but logically it seems to me that he should be protected for any expenses that he has been put to since the day that the property was sold to him in this court. He incurred other expenses [7] possibly prior to that time, and had this \$80,000 bid been in here at that time, those expenses that he incurred prior to that time would have been lost anyhow. But after the sale was made, he then relying on the sale may have incurred expenses and I think he should be protected, as a fourth and final condition, on anything that he is out of pocket since the time the sale was held in this court.

Now, Mr. Brennan, do you have any showing on that?

Mr. Brennan: I have no authority on that.

The Court: I do not mean authority, but I mean showing as to what that might be.

Mr. Brennan: Yes. I was not able to get hold of Mr. Salisbury this afternoon, but just generally there is the question of his counsel fee, whether that comes within your Honor's holding. That was

an expense that was entirely incurred after the sale instead of to attempt to hold the sale. And, secondly, a portion of the property, about one-third of it, as I understand, was sold for \$20,000 to another party. Now, it is true that that sale was made contingent upon the title coming through this court. However, there were some expenses incurred on that. There was another commission that was earned by the same company that Mr. Dunlap represents, on that. Now, whether that was a \$1,000 commission—it would be 5 per cent on \$20,000—they have have not made any direct representation on that at all. [8]

The Court: Is that commission collectible?

Mr. Brennan: No, I don't think that it is.

The Court: I doubt that it is collectible.

Mr. Brennan: I don't think that it is, and I think that probably is contingent upon the sale being ratified, and I don't know of any other expenses other than some incidental costs and probably the interest. It was \$6,000 that he deposited. Probably that is a matter that we would not press. I don't know of any other items of expense that he has had since that time.

The Court: When you speak of counsel fees, you refer to your fees?

Mr. Brennan: That is correct.

The Court: Are you prepared at this time to state what you think those fees should be?

Mr. Brennan: Well, I will tell you what my arrangement is with Mr. Salisbury. Win, lose or draw, my charge is \$500.

The Court: You mean since the date of the sale?

Mr. Brennan: Yes. I did not even know the man before that time, and all my services were for representing him since the date of the sale.

The Court: This court is inclined to think that is a reasonable fee. I will hear anybody that wants to be heard on it. I can pass on what is a reasonable fee without taking testimony and I think it is an expense that has been incurred. [9]

This condition will be that there be paid to Mr. Salisbury for the benefit of Mr. Brennan, or that there shall be paid to Mr. Salisbury and Mr. Brennan, the sum of \$500 counsel fees.

Secondly, his escrow fees or expenses are properly chargeable. That would only be from the date of the sale.

Mr. Brennan: We won't press that.

The Court: If you want that in the order, you can insert it.

Mr. Brennan: I don't know whether your Honor is going on the assumption that \$60,000 is still there. Now, I don't know what Mr. Salisbury's position will be. There was a condition placed upon the bid. that the bid would have to be accepted within a period of time and the escrow closed. I think there was that limitation upon the bid that was put in there and I doubt if he could be held to the \$60,000 sale.

The Court: I don't intend to hold him. I intend this to be opened up on a new sale, and his \$6,100 can be returned.

Mr. Silverstein: We have the check to return.

The Court: The order should provide that any money that Mr. Salisbury has deposited be returned to him.

Now, I am just winding up my month here in August and I am trying to get away. Is there any chance that you could prepare this order and get it submitted to me late tonight or early tomorrow morning?

Mr. Silverstein: Tomorrow morning? [10]

The Court: Yes. At what time?

Mr. Silverstein: At 5:00 o'clock? Any time your Honor wants to give us, we will have the order here.

The Court: That is a pretty big statement, because I will be at the office here probably at about 7:00 or 7:30 in the morning.

Mr. Silverstein: We will have it up here at whatever time your Honor sets.

Mr. Brennan: Mr. Read informs me that Mr. Dunlap is not here. Mr. Read is from the agency. He raises the question as to whether their firm should be reimbursed for Mr. Dunlap's fees, whether you feel that is included in the full commission, and that it at least should be before you as a part of the expenses he has incurred.

The Court: He hasn't lost his commission. I have provided for his commission. It is true he has not had counsel here on it. He is in the same position as if the sale had gone through, as a result of one of these conditions that I imposed. But it is true that he had to employ counsel to retain the Commission he earned.

Mr. Robbins: Your Honor, may I inquire with

reference to one or two items, with reference to the order?

The Court: Yes.

Mr. Robbins: Apparently it would be a very simple order with the exception of the bond or additional deposit. Now, [11] is it the court's order that Mr. Ticktin shall deposit with the receiver the additional sum of \$10,000, making a total of \$20,000, or execute a bond conditioned that he will make at the time of this sale a bid of not less than \$80,000?

The Court: That is right.

Mr. Robbins: Now, in addition to that, these fees or, say, expenses, including the \$3,000 commission, escrow charges, and fees and expenses allowed Mr. Salisbury is that to be in addition to the \$80,000 or will that be included within the \$80,000? In other words, as Mr. Silverstein points out, if it is in addition to the \$80,000, we may have difficulty in completing the sale.

The Court: Well, in the bid that was made, as I recall, \$2,000 of the \$3,000 broker's fee was already taken care of in the bid, isn't that right?

Mr. Robbins: $2\frac{1}{2}$ per cent of \$80,000. That would be \$2,000.

The Court: So there is an additional thousand of broker's fees, and there is \$500 to Mr. Brennan. The escrow fees wouldn't be over a hundred dollars. There would be about a \$1,600 differential.

Mr. Brennan, do you have any thought on that? Do you object if I let that be within the \$80,000?

Mr. Brennan: I would assume it would be dif-

ficult to impose upon the new bidder anything over and above what he [12] has guaranteed here.

The Court: All right.

The order will be that that be within the \$80,000, that is, his total bid. In other words, if the man makes a bid \$20,000 better and if I made this additional to the bid, of course, I would be attempting to jack him up into a higher bid. I think I will provide that that will be within the \$80,000 and not be on top of it.

Mr. Brennan: The receiver will still have very substantial expenses.

The Court: Is there anything further?

Mr. Silverstein, regarding this order, it may be you can get it approved as to form over the telephone and not have to go to the bother of submitting it to counsel.

Mr. Silverstein: If other counsel will agree.

Mr. Brennan: I am satisfied that, so far as my office is concerned, we will not require the opportunity of approving the order. I am sure Mr. Silverstein can handle it.

Mr. Silverstein: I do not know about other counsel.

The Court: Then, you can get the order placed under my courtroom door some time tonight or before 7:30 in the morning?

Mr. Silverstein: Before 8:00 o'clock in the morning?

The Court: Before 7:30 in the morning.

Mr. Silverstein: I don't know.

The Court: That means you can do it any time tonight. [13]

Mr. Silverstein: I don't think the girl in the office will be there to type it.

The Court: There are public stenographers available.

Mr. Silverstein: That is true. Yes, I believe that I can.

The Court: All right. [14]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 1st day of September, A.D. 1951.

/s/ THOMAS B. GOODWILL,
Official Reporter.

[Endorsed]: Filed November 1, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of Cali-

fornia, do hereby certify that the foregoing pages numbered from 1 to 118, inclusive, contain the original Certified Copy of Complaint; Certified Copy of Order Appointing Receiver for Canadian American Company, Inc., and James Albert Wigmore; Certified Copy of Order Authorizing Sale of Orange Grove Avenue Property in California; Order for Sale of Real Property by Receiver at Public Sale and Petition for Same filed July 12, 1951; Notice of Sale; Affidavit of Service of Notice of Sale; Order Setting Time for Hearing on Motion to Vacate Minute Order and Fixing Notice of Hearing and Motion to Vacate and Set Aside Minute Order Authorizing Receiver's Sale of Real Property and for Further Proceedings re Sale with Affidavit of Theodore J. Ticktin; Affidavit of Service; Receiver's Memorandum of Points and Authorities in Support of Motion to Vacate etc.; Affidavit of Leo V. Silverstein; Order on Motion of Receiver to Vacate Minute Order; Report of Appraiser; Order for Sale of Real Property Commonly Known as 915-955-1003 Orange Grove Avenue, Pasadena, California, by Receiver at Public Sale, petition for same and Notice of Sale filed Sept. 20, 1951; Notice of Appeal filed Sept. 25, 1951; Designation of Record on Appeal; Order Setting Time for Hearing on Receiver's Motion for Order Requiring Appellant to Furnish Supersedeas Bond, and Receiver's Motion for Order Requiring Appellant to Furnish Supersedeas Bond; Affidavit of Leo V. Silverstein; Affidavit of Service; Order

on Motion of Receiver for Order Requiring Appellant to Furnish Supersedeas Bond and Notice of Appeal filed Oct. 26, 1951, and a full, true and correct copy of minute orders entered August 13, 1951; August 30, 1951, and October 22, 1951, which, together with copy of reporter's transcript of proceedings on August 13 and August 30, 1951, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 2nd day of November, A.D. 1951.

[Seal] EDMUND L. SMITH,
Clerk.

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 13149. United States Court of Appeals for the Ninth Circuit. D. B. Salisbury, Appellant, vs. Joseph F. Ruggieri, Receiver, etc., Appellee. Transcript of Record. Appeals from the United States District Court for the Southern District of California, Central Division.

Filed November 5, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 13149

In the Matter of the Action Commenced in the
United States District Court for the Eastern
District of New York, Entitled,

UNITED STATES OF AMERICA, *

Plaintiff,

vs.

CANADIAN AMERICAN COMPANY, INC.,
et al,

Defendants.

D. B. SALISBURY,

Appellant,

JOSEPH F. RUGGIERI, as Receiver,

Appellee.

STATEMENT OF POINTS

On the Appeal taken by Notice filed September 26, 1951, from the written formal Order, dated, signed, filed and entered August 31, 1951, Appellant relies upon:

1. The Court erred in making said order as a whole and with respect to each of the five parts thereof.

2. The Court erred as a matter of law in making said order as to the whole thereof and separately in each respect as to each of the five parts thereof.

3. The Court abused its discretion in making said order and as to the whole thereof and separately in each respect as to each of the five parts thereof.

4. The Court erred in directing that the involved property be sold notwithstanding a prior order and sale made to Appellant on August 13, 1951, and in declaring vacated, said order of August 13, 1951.

On the Appeal taken by Notice filed October 26, 1951, from the written final order dated October 25, 1951, Appellant relies upon:

1. The Court erred by requiring in said order, that Appellant furnish a supersedeas bond.

2. The Court erred by requiring in said order that Appellant file a supersedeas bond by five o'clock, October 26, 1951, or specifying any time by which Appellant was required to furnish a supersedeas bond.

3. The Court erred in paragraph (4) of said order in providing that sale of the involved property be made pursuant to "Orders of this Court heretofore or hereafter made" unless Appellant furnish said supersedeas bond by five o'clock, October 26, 1951.

Said written orders of August 31, 1951, and October 25, 1951, will be found respectively on pages 75 and 112, and said Notices of Appeal of Sep-

tember 26 and October 26, 1951, will be found respectively on pages 93 and 118 of the certified record on Appeal.

/s/ MARVIN OSBURN,
Attorney for Appellant
D. B. Salisbury.

[Endorsed]: Filed November 19, 1951.

[Title of District Court and Cause.]

DOCKET ENTRIES

1950

Dec. 15—Fld. cc. copy compl. & ord. appointg. Receiver for Canadian Amer. Co. & James Albert Wigmore, recd. fr. East. Dist. of N. Y., fld. pur. to Title 28, Sec. 754, JS5.

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Feb. 19—Fld. cc. amend. compl. & cc. ord. apptg. receiver, rec'd fr. Clerk, East. Dist. of N. Y.

Feb. 28—Ent. ord. permit Joseph. Jaspan, Esq., of Brooklyn, N. Y., to practice in this court for the purposes of this case, only, atty. Joseph Jaspan being atty. for recr. herein.

Mar. 2—Fld. Receiver's not of mot. retble. 4/16/51 10 a.m. for instructions relative to respective rights of State of Calif., City of Pasa-

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dena, Co. of L. A. & U.S.A. in & to real prop. Fld. Receiver's petn. for instructions.

Mar. 19—Fld. retn. svce. not. of mot.—retn. svd.

Apr. 16—Fld. retn. svce. of not. of mot.—retn. svcd.
on Sec. of State.

Apr. 16—Ent. ord. contg. 5/21/51 hrg. petn. Recr.
for instructions, etc.

Apr. 26—Fld. memo of Recvr. for instructions relative to rights of respective taxg. auths. to share in proceeds of real property, etc.

May 15—Ent. ord. cont. hrg. on petn. of Jos. F. Ruggieri, Recr., fld. 3/2/51, for insts. etc., fr. 5/21/51 to 5/28/51 10 a.m. Mld. notices counsel.

May 28—Ent. proc. & ord. cont. to 6/11/51 9:30 a.m. hrg. petn. of recvr. fld. 3/2/51, for insts., etc.

June 11—Ent. proc. & ord. cont. 7/9/51, 10 a.m., hrg. petn. of recr., fld. 3/2/51 for insts., etc.

July 6—Fld. certd. copy, ord. of U.S. Dist. Court, East Dist. of N. Y., authorizing sale Orange Grove Ave. property in Calif.

July 6—Fld. plfs. affid. svce. by mail re ord. auth. sale.

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- July 9—Ent. proc. hrg. petn. of Joseph F. Ruggieri, Recr., fld. 3/2/51, etc., & stip. re priority of liens, is presented, & counsel directed to prepare & present formal ord. for sign. Fld. stip. re priority of liens.
- July 12—Fld. ord. for sale of real property by Recvr. at public sale.
- July 13—Dktd. & ent. ord. on stip. that prop. known as 270 Wigmore Drive, Pasadena, Calif., etc., was on 12/5/50 vested in James Albert Wigmore & Pearl Johnstone Wigmore, subject to a trust & cert. liens & that on 2/5/51 said Wigmore's directed trustee to convey said prop. to a designee of Joseph F. Ruggieri, receiver & said prop. is now vested in said receiver or his designee; fur. settg. forth amt. of various liens for city, county & federal taxes & directg. receiver to sell said prop. at public auction, settg. forth manner of sale & pymt. of said tax liens, etc., & fur. ord. that title to prop. known as 915-955 & 1003 S. Orange Grove Ave., Pasadena, Calif., was vested in Wagner Realty Co. prior. to 2/28/51 at which date Joseph F. Ruggieri took possession as receiver & ord. said receiver to sell said property at public auction & fxg. manner of pymt. of liens thereon, htf. fld. 7/11/51.

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- July 20—Fld. recvrs. not. of sale. Fld. affid. of svce. by mail.
- July 26—Fld. plfs. affid. svce. by mail re ord. auth. sale Wigmore residence. Fld. certd. copy ord. of U. S. Dist. Ct. for East. Dist. of N. Y., auth. sale of Wigmore residence in Calif.
- Aug. 6—Fld. affid. of publication.
- Aug. 13—Ent. Proc. on public auction & Ent. Ord. propt. known as 915-955-1003 Orange Grove Ave., Pasadena, Calif., be sold to D. B. Salisbury for \$60,110.00 (no other bids recd.); Counsel for Recvr. to prepare & present written Ord. thereon. (C.)
- Aug. 16—Fld. Mot. & Ord. Setting Time at 8/22/51, 10 a.m., for Hrg. on Mot. to Vacate Minute Ord. Authorizing Recvr's. Sale of Real Propt. & Ord. Shortening Time for Svce.
- Aug. 20—Fld. Certd. Copy of Ord. Auth. Recvr. to institute suit re 270 Wigmore D., Pasadena, Calif. Fld. Affid. of Svce by mail of Mot. to Vacate & Set Aside Min. Ord. Auth. Recvr's. Sale of Real Propt. & for fur. Proc. re sale & Ord. setting time for Hrg. & Fxg. Not. of Hrg.
- Aug. 24—Fld. Recvr's. Memo. of Pts. & Auths. in Sup. of Mot. to Vacate & Set Aside Min. Ord. Auth. Sale of Real Propt. Fld. Memo.

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of Pts. & Auths. in Oppos. to Mot. to Vacate & Set Aside Min. Ord., etc. Fld. Memo. of Pts. & Auths., re Mot. to Set Aside Sale of Propt. to D. B. Salisbury.

Aug. 27—Ent. Proc. Hrg. Mot. Recvr. to Set Aside Ord. of 8/13/51 & Ord. Stand Submitted (C). Fld. Affid. Leo V. Silverstein.

Aug. 30—Ent. Proc. & Oral Decision Grantg. Mot. Recvr. to Set Aside Sale to D. B. Salisbury on cert. conditions; Counsel for Recvr. to prepare form of order thereon for Ct's. Signature forthwith. (C.) Mot. fld. 8/31/51.

Aug. 30—Fld. Ord. on Mot. of Recvr. to Vacate Minute Ord. of 8/13/51. M. fld. 8/31/51.

Sept. 4—Fld. Report of Appraiser.

Sept. 11—Fld. Not. of Ord. on Mot. of Recvr. to Vacate & Set Aside Min. Ord. Auth. Sale of Real Propt.

Sept. 21—Dktd. & Ent. Ord. for Sale of Real Propt. known as 915-955-1003 Orange Grove Avenue, Pasadena, California, Providing for Notices & for Publ. said Notice, etc., fur. Ord. that Offer of Theodore J. Ticktin to Purchase be Considered at said Sale, etc., & Allow Recvr. to pay Brokerage Commission of 2½% of Sale Price, with Petn. of Joseph F. Ruggieri, Recvr., &

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Not. of Sale Attached thereto, htf. fld. 9/20/51. Dktd. & Ent. Ord. for Sale Real Propt. known as 270 Wigmore Drive, Pasadena, California, providing for Notices & for Publ. said notice, etc., fur. Ord. that Offer of Richard Rand to purchase be considered at said Sale, etc., appointing Eldred L. Meyer to Appraise value of said Propt. & Allow him Compens. of \$25.00 per diem, & fur. Allow Recvr. to pay brokerage Commission in Accord with Probate Rules of this Distr., etc., with Petn. of Joseph F. Ruggieri, Recvr., & Not. of Sale attached thereto, htf. fld. 9/20/51.

Sept. 25—Fld. Affid. of Svce. by Mail of Notices of Sale.

Sept. 26—Fld. Not. of Appeal of D. B. Salisbury. Filed Cash Bond on Appeal in Amt. of \$250.00. Sent. Copy to Leo Silverstein, Atty.

Oct. 11—Fld. D. B. Salisbury's Desig. of Contents of Rec. on Appeal.

Oct. 15—Fld. Report of Appraiser.

Oct. 17—Fld. Recvr's. Mot. for Ord. Requiring Appellant D. B. Salisbury to Furnish & File Supersedeas Bond & Ord. thereon retble. 10/22/51, 10 a.m. Fld. Affid. of Leo Silverstein in Sup. thereof.

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- Oct. 18—Fld. Affid. of Publ. (2 Documents). Fld. Affid. of Svce. by Mail by Atty. for Recvr.
- Oct. 22—Ent. Proc. on Mot. of Ruggieri, Recvr., for an Ord. Requiring Appellant D. B. Salisbury to Furnish Supersedeas Bond, & Ent. Ord. Fxg. Supersedeas Bond at \$20,000.00.
- Oct. 25—Fld. Ord. on Mot. of Recvr. for Ord. Requirg. Appellant, D. B. Salisbury, to Furnish & File Supersedeas Bond.
- Oct. 26—Fld. Not. of Appeal of D. B. Salisbury from Ord. Directing the Flg. of Supersedeas Bond. Mld. Copy to Atty. Leo Silverstein.
- Oct. 29—Fld. Affid. of Svce. Ent. Ord. Accepting Offer of Richard Rand to Purchase Propt. 270 Wigmore Drive, Pasadena, for \$38,000.00, in accordance with Ord. to be Prep. for Sign. of Ct. Ent. Ord. Postponing fur. Proc. re Sale of Orange Grove Ave. Propt. in Pasadena, Calif., to 11/26/51—Notice Waived.
- Nov. 1—Fld. Reprts. Transc. of Proc. of 8/13/51 & 8/30/51.
- Nov. 2—Issd. for D. B. Salisbury on 2 Appeals to C. A. (original papers) Certd. Transc. of Rec. 5 pp. @ 40c, \$2.00, and Forwarded 2 Vols. Reprts. Transc.

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Nov. 5—Fld., Dktd. & Ent. Ord. Confirm. Sale to Richard Rand by Recvr. herein of certain Real Propt. known as Lot 9, Tract 12289, City of Pasadena, etc., with certain Exceptions therefrom, etc., & Auth. Receiver to pay Henry Morris Ullman 5% of Purchase Price as Brokerage Comm. & Directg. Recvr. upon Pymt. of Purchase Price to Deliver said Richard Rand, etc., a Deed thereto. Notif. Attys.

